(19,308.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 233.

A. H. LEONARD, GEORGE R. WILSON, R. N. SMITH, ET AL., PLAINTIFFS IN ERROR,

vs.

THE VICKSBURG, SHREVEPORT AND PACIFIC RAILROAD COMPANY, J. H. McCORMICK, RECEIVER, AND C. C. HARVEY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

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a UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

VICKSBURG, SHREVEPORT AND PACIFIC RAILROAD Company, Plaintiff in Error,
versus
A. H. LEONARD, GEORGE R. WILSON, R. N. SMITH, E. A. Smith, Wife of Marine Du Val; W. H. Smith, Annie B. Smith, Eddie Smith, Robert Smith, John L. Smith, Susan Crenshaw, Wife of A. Crenshaw; J. H. Smith, Carrie L. Smith, J. S. Keene, Horace Keene, Florence Keene Spear, Wife of L. Spear; Marine Du Val, A. Crenshaw, and L. Spear, Defendants in Error. } No. 14865.

Stubbs & Russell, and W. H. Wise, for plaintiff in error.
W. P. Hall, E. W. Sutherlin, A. H. Leonard, for defendants in error.

Writ of error to the supreme court of the State of Louisiana from the Supreme Court of the United States of America, returnable at the city of Washington, D. C., within thirty days (30) from the thirtieth day of March, A. D. 1904.

Transcript of Record.

1 Petition.

To the honorable the judge of the first judicial district of the State of Louisiana:

The petition of the Vicksburg, Shreveport and Pacific Railroad Company, a corporation duly organized under the laws of the State of Louisiana with its domicile at Monroe in the parish of Ouachita in said State and herein represented by C. C. Harvey, president of the parish of Orleans in your said State respectfully represents that petitioner is the owner of the following tract of land situated in Caddo parish, Louisiana, to wi-:

Lots one, two, three, four, five, six, seven, eight, nine (1, 2, 3, 4, 5, 6, 7, 8, 9) of section thirty-one (31) township eighteen (18) range thirteen (13) containing one hundred and seventy-eight & 80/100 acres less a parcel of land recovered by plaintiffs in a suit of Robert N. Smith *et als. vs.* George A. Turner *et als.* No. 80 United States circuit court, 5th circuit and western district of Louisiana and more particularly described as follows viz:—Commencing at rock on range line between townships thirteen and fourteen and traverse of Silver

lake thence S. 59½ east twenty-one 25/100 chains thence north 45 east one thousand feet; thence north 10° east two hundred and eight feet to point of beginning of land in possession of George A. Turner; thence same course 570 feet to a willow tree 32 inches in diameter; thence north 23° east 515 feet; thence north 68° 40′ west 453 ft. thence south 36° 40′ west 297 ft. thence from willow corner south 80° 35′ west 200 ft.; thence south 55° 20′ west 309 ft. thence south 31° 40′ east 425 ft. thence north 33° 40′ west 500 ft.; thence north 55° 15′ east 480 ft.; thence north 85° east 364 ft.; thence north 73° 20′ east 220 ft.; thence north 64° 3′ east 335 ft.; thence north 30″ 2° east 190 ft.; thence north 0° 35′ east 652 ft.; thence along bank of Red river 1165 ft. to a point on east line of the ditch at its junction with Red river: thence south 19° 45′ west 600 ft. thence north 70″ 12 west 120 ft. to the willow tree aforesaid containing thirty-five 18/100 acres.

2 Petitioner further represents that the said company acquired title to said property through the grant of the United States in act approved June 3rd 1856 entitled An act making a grant of land to the State of Louisiana to aid in the construction of railroads in said State duly accepted by the grantee and the trustee, and that the said land was included in the approved selections made under authority of said act and that its title was further acquired through divers mesne conveyances, mortgages, decrees and sales and by the comptroller of the railroad through the parish of Caddo from the west bank of Red river to the Texas State line west of Greenwood before the 3rd day of June 1866.

Petitioner further represents that the said land is in the illegal and wrongful possession of the following-named persons viz:—Caroline Butler, *femme sole*, Albert Tibbs, Phillis Moss, *femme sole*, Estelle Moss *femme sole*, Robert Napoleon, Lula Walker, *femme sole*, Clara Robertson, *femme sole*, Millie Harris, *femme sole*, Ike Garner, Dock Edwards, Jim Walters, Sarah Williams, *femme sole*, Alice Henderson, *femme sole*, Myra Collins *femme sole*, Sarah Robertson, John Simmons, Julia Bailey, *femme sole*, Thursday Granberry, Rosa Harris, *femme sole;* Ella Gordon, *femme sole;* Joe Smith; Hattie Mitchell, *femme sole;* Mary King, *femme sole*, Cora Skannel, *femme sole;* Cinderella Gordon, *femme sole;* H. Adams, Mary Nelson, *femme sole;* P. Ford; Fannie Harris, *femme sole;* Catherine Ford, *femme sole*, Daniel Wilkinson, Wilson Hawkins, Eli Jackson M. A. Peterson; Issabella Smith, *fem-e sole;* Katie Brazile, *femme sole;* Mary Jordan, *femme sole;* Alice Johnson, *femme sole*, Clara W. Johnson, *femme sole;* L. Logan; Flem Logan Horace Logan, Laura Williams, *femme sole;* Rachel Boyd, *femme sole;* Geo. Ware, John Atkins, Mose Stokes, M. C. Williams, *femme sole*, Samuel Stokes, George Nicholson.

3 Petitioner further represents that said defendants are in possession of above-described land without title or color of title, but as pure trespassers and possessors in bad faith are liable to petitioner for rents during their occupancy of said land.

That said land is worth at least ten thousand dollars, and that the rental value of same is worth one thousand dollars per annum.

Wherefore, premises considered petitioner prays for citation to said defendants, and after due proceedings had for judgment against them decreeing petitioner to be the legal owner — the said tract of land and ordering petitioner to be put in possession of same by a writ of possession according to law, and for judgment against said defendants *in solido* for the rents and revenues of said land at the rate of one thousand dollars per annum from the commencement of their unlawful possession until petitioner is put in possession of same and for costs of this suit. Petitioner prays for all necessary orders and for general relief.

STUBBS & RUSSELL,
WISE & HERNDON, *Attorneys.*

Service of foregoing petition accepted, citation and time waived.

her
CAROLINE x BUTLER.
mark.
ALBERT TIBBS.
her
PHILLIS x MOSS.
mark.
her
ESSTELA x MOSS.
mark.
her
ROBERTA x NAPOLEON.
mark.
LULA WALKER.
her
CLARA x ROBERTSON.
mark.
her
MILLIE x HARRIS.
mark.
his
4 IKE x GARNER.
mark.
his
DOCK x EDWARDS.
mark.
his
JIM x WALTERS.
mark.
her
SARAH x WILLIAMS.
mark.
her
ALICE x HENDERSON.
mark.
her
MYRIA x COLLINS.
mark.

her
SARAH x ROBERTSON.
mark.
his
JOHN x SIMMONS.
mark.
JULIA BAILEY.
THURSDAY GRANBERRY.
her
ROSA x HARRIS.
mark.
her
ELLEN x GORDON.
mark.
her
JOE x SMITH.
mark.
her
HATTIE x MITCHELL.
mark.
her
MARY x KING.
mark.
CORA SKANNEL.
her
CINDERELLA x GORDON.
mark.
his
H. x JAMES.
mark.
her
MARY x NELSON.
mark.
her
P. x FORD.
mark.
FANNIE HARRIS.
her
CATHERINE x FORD.
mark.
his
DANIEL x WILKERSON.
mark.
his
5 WILSON x HAWKINS.
mark.
his
ELI x JACKSON.
mark.
her
M. A. x PETERSON.
mark.
ISSABELLA SMITH.
her
KATIE x BRAZILE.
mark.

her
MARY x JOURDAN.
mark.
her
ALICE x JOHNSON.
mark.
CLARA W. JOHNSON.
D. LOGAN.

Witness:
J. L. GILLILAND.

(Endorsed:) Filed May 5th 1896. F. A. Leonard, clerk.

6 *Disclaimer.*

District Court, Caddo.

V., S. & P. R. R. Co.
vs.
ALBERT TIBBS ET ALS. } No. 5231.

Now comes defendants in above case and aver that their possession of portions of land in controversy is merely that of lessees and tenants of the owners of said property, to-wit A. H. Leonard, of Shreveport; George R. Wilson of Lexington Mississippi and the heirs of W. W. Smith viz.—

R. N. Smith, E. A. Smith wife of Marine Duval, W. H. Smith Amy B. Smith Eddie Smith Robert Smith and Ernest Smith residents of the State of Kentucky; John L. Smith of Colorado, W. W. Smith of Russell Kansas Susan Crenshaw, wife of Aleck Crenshaw of Orange City, Florida, J. H. Smith of Teshawing Indian Territory, Carre L. Smith, of Gallatin, Tenn. J. S. Keene, and Horace Keene of Galveston, Texas, and Florence Keene Speer wife of L. Speer of Crocker, Missouri.

The non-residents being represented by D. T. Land att'y and agent.

Wherefore, defendants pray that they be hence dismissed.

D. T. LAND, *Att'y.*

(Endorsed:) Filed December 31, 1898. F. A. Leonard, clerk.

7 *Plea of Res Judicata and Estoppel.*

District Court, Caddo.

VICKSBURG, SHREVEPORT & PACIFIC R. R. Co.
vs.
ALBERT TIBBS ET AL., A. H. LEONARD ET ALS., Substituted. } No. 5231.

Now come A. H. Leonard, George R. Wilson, R. N. Smith, E. A. Smith wife of Marine Duval joined and authorized by her husband W. H. Smith, Amy B. Smith Eddie Smith, Robert Smith, Ernest Smith, John L. Smith, W. W. Smith, Susan Crenshaw, wife of Aleck Crenshaw, joined and authorized by her husband J. H. Smith, Carrie L. Smith, J. S. Keene, Horace Keene, Florence Keene Spear, wife of L. Spear joined and authorized by her husband, and Marine Duval Aleck Crenshaw, and L. Spear herein joined their said wives all made defendants herein, owners and possessors of the entire tract of land known as Silver Lake appearing sole-y for the purpose of this plea and reserving all legal rights who *at* a p-rem-tory exception to and plea in bar of plaintiff's demand plead *res judicata* and estoppel.

They aver that the heirs of W. W. Smith deceased the parties above named with exception of A. H. Leonard & Geo. R. Wilson instituted suit No. 80 on docket of the circuit court of the United States for the western district of Louisiana, against Geo. A. Turner alleging and claiming ownership of the entire tract known as Silver Lake and praying to be restored to possession of about forty acres of said tract illegally held by said Turner. That in said suit Turner appeared, disclaiming title, aver-ing that he held a- tenant of The Vicksburg Shreveport & Pacific R. R. Co. (pl'ff herein) and thereupon the said V. S. &. P. R. R. Company appears interposing pleas in bar and also answered claiming possession and ownership of the entire tract known as Silver Lake and setting up in such answer their title to said tract as a whole. That on final hearing a judgment was rendered in said suit No. 80 in favor of the
8 plaintiffs therein, the said heirs of W. W. Smith decreeing them to be owners of the land in controversy in said suit and restoring them to possession of same, that under said judgment the said heirs of W. W. Smith (defendants herein) were put in possession of said land.

That said judgment is effective and final and has the force and effect of *res ad judicata* as against all parties to said suit and against the claims of plaintiffs herein made and estopps them, pl'ff- herein from asserting claims herein made.

That after said judgement so became final and *defendive* the said Leonard and Wilson acquired each an undivided interest in the

entire tract known as Silver Lake and entered into possess- of same.

Defendants annex to and make part of this plea the petition in suit of R. N. Smith *et als. vs.* Geo. A. Turner No. 80 U. S. circuit court, western district, La. The answer of G. A. Turner the order of court substituting The Vicksburg Shreveport & Pacific R. R. Company as defendant in place of Turner.

The exception and plea of *res judicata* and the answer filed on said suit by the said V. S. & P. Ry. Co. The judgement of the said circuit court rendered and signed in said suit and the final decree of the Supreme Court of the United States in suit V. S. & P. R. R. Co. pl'ffs *vs.* Smith *et als.* and acts of sale from heirs of Smith to A. H. Leonard & Thos. T. Land & others and from Land and others to Wilson and Leonard.

And defendants pray that this plea of *res judicata* and estoppel be maintained and that plaintiffs' demand be rejected.

D. T. LAND,
A. H. LEONARD,
Att'ys for Def'ts.

(Endorsed:) Filed November 8th 1900. J. H. Levy, d'y clerk.

9 *Petition Making Parties.*

District Court, Caddo.

V., S. & P. R. R. Co.
vs.
ALBERT TIBBS ET ALS. } No. 5231.

Now comes plaintiff and represents to the court that defendants have appeared disclaiming interest and aver-ing themselves to be tenants of A. H. Leonard, George R. Wilson and the heirs of W. W. Smith viz:—R. N. Smith E. A. Smith; wife of Marine Duval W. H. Smith, Amy B. Smith, Eddie Smith, Robert Smith, Ernest Smith, John L. Smith W. W. Smith; Susan Crenshaw wife of Aleck Crenshaw; J. H. Smith; L. Smith; J. S. Keene; Horace Keene and Florence Keene Spear wife of L. Spear all non-residents (except said Leonard) but herein represented by D. T. Land attorney and agent.

Plaintiffs pray that said parties be made defendants herein and that service of original petition be made on them, adopting all allegations of said petition Plaintiffs pray for relief as therein prayed for.

WISE & HERNDON,
Att'ys for Plaintiffs.

Service accepted, Citation and time waived for all above named parties made defendants.

D. T. LAND,
A. H. LEONARD,
Att'y- for Defendants.

(Endorsed:) Filed January 21st 1899. F. A. Leonard, clerk.

10 VICKSBURG, SHREVEPORT & PACIFIC R. R. Co.
vs.
ALBERT TIBBS ET ALS. } No. 5231.

Now comes J. H. McCormick receiver of the plaintiff company duly appointed and qualified under a judicial decree of the circuit court of the United States for the fifth circuit and western district of Louisiana rendered on 21st day of April A. D. 1900, and adopting all allegations of plaintiffs' petition appears therein for the prosecution of this suit and prays for judgement on its original petition and for all orders necessary and for general relief.

WISE & HERNDON, *Attorneys.*

(Endorsed:) Filed April 19th 1901. J. H. Levy, d'y clerk. Appearance of J. H. McCormick receiver.

11 *Answer of Heirs of Smith and of Geo. R. Wilson.*

In the District Court of Caddo Parish, Louisiana.

VICKSBURG, SHREVEPORT & PACIFIC RAILROAD Company
versus
ALBERT TIBBS ET ALS., THE HEIRS OF W. W. SMITH, and George R. Wilson and A. H. Leonard, Substituted. } Number 5231.

In this case now comes the heirs of W. W. Smith deceased and George R. Wilson, defendants herein and for answer they deny, all and singular the allegations of plaintiffs' petition except such as are herein admitted.

They admit that they are in possession of the property claimed in the plaintiffs' petition; and they further admit that they recovered in suit No. 80 in the United States circuit court for the western district of Louisiana entitled Robert N. Smith *et als. vs.* George A. Turner, the thirty-five and 18/100 acres described in plaintiffs' petition.

Further answering defendants aver that they are the legal heirs of W. W. Smith, deceased late of Caddo parish Louisiana, and as such, have succeeded to all of his rights and property in said State,

except George R. Wilson, who acquired an interest in said property from his co-defendants the heirs of said Smith; and together they own a seven twelfths—(7/12) interest in said land.

They further allege that the State of Louisiana sold to the said W. W. Smith on the 14th day of May 1853, the tract of land claimed by plaintiff in section thirty-one (31) township eighteen (18) north, range thirteen (13) west situated in Caddo parish Louisiana at the price of one dollar and twenty five cents per acre (1.25), which was paid to the treasury of the State by the said Smith and never returned to him.

12 They further allege that after said sale the State of Louisiana through its constituted authorities did on the 24th day of February 1855 issue a patent to said tract of land to the said Smith as fully appears by said patent hereto annexed and made a part thereof.

They further allege that the State of Louisiana claimed and acquired said tract of land as swamp and overflowed land granted to the State of Louisiana by acts of Congress of 1849 and 1850, known as the swamp land grants and that the State sold the said land to the said Smith as swamp and overflowed lands.

They further allege that all sales of land in Louisiana made as swamp and overflowed land, whether made by the United States Government, or by the State, and whether the land sold was of that character or not, were confirmed by the acts of Congress approved March 2nd 1855 entitled "An act for the relief of purchasers and locators of swamp and overflowed lands."

They further allege that said act of Congress of March 2nd 1855 was extended so as to protect sales made after its passage by the act of Congress, of March 3rd 1857, to confirm all selections of swamp and overflowed lands by the several States under the acts of Congress of 1849 and 1850.

They further allege that the said act of Congress of March 2nd 1855 for the relief of purchasers and locators of swamp and overflowed lands, confirmed the title of said W. W. Smith to said tract of land whether said land belonged to the State of Louisiana under the swamp land grants of Congress or whether it belonged to the United States.

They further allege that the said W. W. Smith thus acquired a title to said land from both the State of Louisiana and the United States, by purchase from the State and by confirmation by Congress and that said title is paramount to all subsequent claims from the Government and is indefeasable under the acts of Congress of March 2nd 1855.

13 They further allege that in the case of R. N. Smith *et als. vs.* Geo. A. Turner, The Vicksburg Shreveport and Pacific Railroad Company, substituted, No. 80 on the docket of the United States circuit court for the western district of Louisiana sitting at Shreveport, Louisiana in which these defendants and their authors were plaintiffs and the present plaintiff, The Vicksburg Shreveport

and Pacific Railroad Company was defendant, these defendants then plaintiffs, claimed a part of the same tract of land now in dispute upon the same title upon which they now rely and which is set forth above; and the said Vicksburg, Shreveport and *Vicksburg* Railroad Company then defendant now plaintiff herein also set up title to the same and relied on the same grant and title from the United States that it now sets up and relies upon in this suit.

They further allege that in said suit No. 80 a verdict and final judgement were rendered in favor of these defendants and against the Vicksburg Shreveport & Pacific Railroad Company sustaining the title set up by these defendants as superior to that set up by the said Vicksburg Shreveport & Pacific Railroad Company and these defendants plead said verdict and judgement as *res judicata* and estoppel of all the questions put at issue and decided in that case and especially of the right of the said railroad company to claim any other lands under the same title against the same title held by these defendants, the respective strength of which titles was then put at issue and then decided.

The record in said suit No. 80 already filed in evidence in this case is annexed to and made a part of this plea and answer.

Wherefore defendants pray that plaintiffs' demand be reject-d and that the pleas of *res judicata* and estoppel be sustained an- that plaintiffs' demand be dismissed at its cost and for general and equitable relief.

E. W. SUTHERLIN.
W. P. HALL.

(Endorsed:) Filed Feb. 7 1903. J. H. Levy, d'y clerk.

14 *Answer of A. H. Leonard.*

District Court, Caddo.

VICKSBURG, SHREVEPORT & PACIFIC R. R. Co.
vs.
ALBERT TIBBS ET ALS. } No. 5231.

Without prejudice to the plea of *res judicata* and estoppel herein filed reserving same and reserving all legal rights.

Now comes Albert H. Leonard a citizen of the State of Louisiana who for answer to plaintiffs' petition deny- all and singular the allegations thereof except as herein admitted.

He admits that plaintiffs are not owners of 35 & 18/100 acres of land recovered by R. N. Smith *et als.* as shown by judgement rendered in suit R. N. Smith *et als. vs.* G. A. Turner *et als.*, No. 80 docket U. S. circuit court for the 5th circuit and western district Louisiana and admits that said 35 & 18/100 acres is a portion of the tract of land described in plaintiffs' petition and usually known as

Silver Lake. He admits that he and his co-defendants are in possession of the entire tract of land usually known as Silver Lake tract. He avers that they and he are owners of and in possession of same as heirs of W. W. Smith deceased and as vendees of said heirs and that they were put in possession of same by the marshall of the western district of Louisiana acting under authority of writs of possession issued in the said suit No. 80 and in suit No. 139 on docket of said circuit court of the United States for the western district of Louisiana entitled R. N. Smith *et als. vs.* Jake Ford *et als.* in the years 1886 and 1889 and has ever since possessed same as owners.

As a p-remptory exception and plea in bar to plaintiffs' demand they plead *res judicata* and estoppel resulting from the judgement and the record in said suit No. 80.

He avers that the State of Louisiana through its constituted authorities sold to W. W. Smith (since deceased) on the 14th
15 day of May 1853 a certain tract of land known as Silver Lake situated in section thirty-one (31) township 18 range 13 in the said parcel of Caddo parish (including the land described in pl'ff-' petitio-) containing an area of 186 & 57/100 acres at the maximum price of $1.25 which at the time was paid into the treasury of the State by the said W. W. Smith as fully appears by the certificate of sale hereunto annexed and made part hereof. That after said sale the State of Louisiana through its constituted authorities did on the 24th day of February 1855 issue a patent for said tract of land to the said W. W. Smith as appears by said patent hereto annexed that the State of Louisiana claimed and acquired the said land as swamp and overflowed land granted to the State by acts of Congress of 1849 and 1850 known as the swamp land grant acts, and that the State sold said land to W. W. Smith as swamp and overflowed land, that the tract of land was — the date of passage of said act of Congress swamp and overflowed land.

That all sales of land in Louisiana claimed as swamp and overflowed land by the State whether made by the United States or the State whether the land sold was of that character or not were confirmed by act of Congress approved March 2nd 1855 entitled "An act for the relief of purchasers and locators of swamp and overflowed lands."

Which said act was extended to sales made after the passage and continued in force by act of Congress of March 3rd 1857 to confer on all selections of swamp and overflowed lands by the several States under the acts of 1849 and 1850.

That the said W. W. Smith acquired title to said land both from the State of Louisiana and the United States by purchase from the State and conformation by act of Congress and that said title is paramount to all subsequent claims from the Government and is indefeasable under the act of confirmation of the 2nd March 1855

That he and his co-defendants are the just true and legal
16 owners of the tract of land known as Silver Lake Respondents further allege that the said R. N. Smith and other heirs

of W. W. Smith deceased finding one Geo. A. Turner in *po*possession of a portion of said tract of land instituted in the said circuit court of the United States a petitory action against him claiming ownership of the entire tract of land known as Silver Lake alleging that a portion of same, viz: about 40 acres was in the wrongful possession of Turner, making all the allegations hereinbefore made and prayed for judgement decreeing them to be the owners of said tract and putting them in possession of that portion held by him.

That in said suit Turner appeared, disclaimed title and declared he was holding as a tenant of The V. S. & P. R. R. Co., plaintiffs herein. That said railroad company appeared party defendant in said suit, answered denying the allegations made by the said R. N. Smith and others in said suit setting up title in said company just as they now in this suit declare on it and interposed various objections to the title of W. W. Smith and exceptions and pleas to the action so brought by his said heirs, all of which appears by the answer and exceptions and the pleadings in said suit No. 80 and the record thereof, hereto annexed and made part hereof. That on the issues so raised said suit No. 80 was tried and there was judgement in favor of the plaintiffs therein the said heirs of W. W. Smith deceased and against the said railroad company decreeing the said heirs to be the owners of Silver Lake and entitled to possession of same.

That the railroad company appealed from said judgement by writ of error to the Supreme Court of the United States which court dismissed said writ and affirmed said judgement which thereupon became final, and thereupon the rail railroad company surrendered to the heirs of W. W. Smith all that portion of the said Silver Lake tract in the possession of the said company and fully acquired in said judgement. Respondents aver that said judgement is final and conclusive against the pretensions of said railroad
17 company, plaintiff herein and defendants in said suit No. 80.

That as against the said railroad company the allegations herein made are conclusively true, in consequence of the judgement aforesaid, have the force and effect of the thing adjudged, and that said judgement is a full complete and effective bar to any claim of ownership of the said Silver Lake tract or any portion thereof on the part of the said railroad company. Respondents further aver that on July 5th 1888, the said R. N. Smith and others heirs of W. W. Smith deceased instituted suit against Jake Ford and others some 75 in number who were and had been for many years squatters and trespassers on the said Silver Lake tract and as such in possession of that portion of same, not held as aforesaid by said G. A. Turner.

That in said suit the said heirs of W. W. Smith made allegations similar to those made in the said suit No. 80 and made similar prayer to which said defendants answered and on trial there was judgement against said defendants Jake Ford and others in fa*ovr* of said heirs That writs of possession issued under which Horace

Logan one of the defendants was evicted, and the other defendants acqu-esced and surrendered possession to said heirs of W. W. Smith all of which appears by reference to the record in said suit against Ford and others and to the writ of possession thereon issued with return thereon, which are hereto annexed.

Wherefore defendants herein pray that the plaintiffs' demand be rejected and this action dismissed at plaintiffs' cost.

Defendants aver that since the year 1886 continuously the land claimed by plaintiffs has been assessed to him and his co-defendants for taxation and that he has continuously on or before the first day of January of each year since 1886 paid 5/12 of the taxes assessed against said land amounting to the sum of two hundred and fifty dollars so paid by him annually. In event plaintiff recovers said land he prays that he have judgement against plaintiffs for
18 the amount of taxes so paid by him with legal interest from January 1st., of each year on the amount paid each year and that he be maintained in possession until said amounts and interests are paid to him and for general relief.

A. H. LEONARD, *Pro Se.*

(Endorsed:) Filed February 23rd. 1903., J. H. Levy, d'y clerk.

19 *Appearance of C. C. Harvey.*

D. C. of Caddo Parish, Louisiana.

V., S. & P. R. R. Co.
vs.
ALBERT TIBBS ET ALS. } 5231.

Now comes C. C. Harvey of the parish of Orleans, State of La., and represents that during the pendency of this suit he became the purchaser of the lands described in this petition, at public auction made by Wm. Grant master in chancery on — day of —— 1902 and reported by said master to the court but opposition having been made to the adjudication said sale has not yet been confirmed but appearer adopts the allegations of the original petition and prays to be decreed the owner of said lands as set forth therein and general relief.

F. P. STUBBS,
W. H. WISE,
Attorneys.

(Endorsed:) Filed February 23 1903. J. H. Levy d'y clerk.

20 *Plea of Res Adjudicata.*

In First District Court of Louisiana.

V., S. & P. R. R. Co.
vs.
ALBERT TIBBS ET ALS. } No. 5231

Now comes J. H. McCormick, receiver of the V. S. & P. R. R. Co., and files his plea and exception of *res judicata* to defendants' answer and plea therein of ownership of lands described in the petition on the following grounds, to-wit:—

That in a suit entitled State of Louisiana *vs.* W. W. Smith 5135 on the docket of the district court of Caddo parish La., filed ——, 1857 defendant put at issue the validity and legality of his title to the land described in plaintiff's petition herein, and by virtue of the certificate and patent described in said petition and upon final hearing judgment was rendered in said suit decreeing said certificate and patent null and void, and decreeing the cancellation of same and ordering same to be delivered to The State of Louisiana plaintiff therein. All of which will fully appear by reference to certified copy of pleadings, evidence and judgement in said suit hereto annexed and made part hereof.

That in said suit No. 5135 the defendant obtained an order of appeal from the verdict of the jury and the judgement of the court rendered therein in favor of the plaintiff, to the supreme court at its session in July 1860. That at the session of the supreme court at Natchitoches in 1869 the said appeal was dismissed that defendants in this suit claiming to be the heirs and assigns of the said W. W. Smith are bound by the judgement in said suit which is as to them *res adjudicata* and perpetual bar to their rights of action, and therefore plaintiff prays that this exception be sustained and defendants' demand be rejected.

F. P. STUBBS,
W. H. WISE,
Att'ys for Pl'ffs.

(Endorsed:) Filed Feb. 23 1903. J. H. Levy d'y clerk.

21 *Opinion, Decree, and Orders for Appeal.*

In First Judicial District Court, Caddo Parish, Louisiana.

VICKSBURG, SHREVEPORT & PACIFIC R. R. Co., J. H. McCormick, Receiver, Substituted,
versus
ALBERT TIBBS ET ALS., HEIRS OF W. W. SMITH ET ALS., Substituted. } No. 5231.

This suit is a petitory action to recover 178 & 80/10- acres of land in Caddo parish less 35 & 18/100 which last named tract was decreed to belong to Robert N. Smith and others in the suit of Robert N. Smith *et als. vs.* George A. Turner The V. S. & P. R. R. Co., substituted No. 80 in U. S. circuit court 5th circuit western district of Louisiana.

Judgement. At the threshold of this investigation we are met with the plea of *res judicata*. This — a plea based upon the fact in above named suit No. 80 in the United States circuit court Robert N. Smith and others sued Geo. A. Turner for 35.18 acres in the tract of 178.80/100 acres known as Silver Lake and recovered judgement for it after The V. S. & P. R. R. Co. had been substituted as a defendant for Geo. A. Turner lessee.

On the trial of that case the counsel for the V. S. & P. R. R. Co. offered to prove that the entire tract of 178.80 acres was worth ten thousand dollars ($10,000.00) The counsel for the plaintiff Robert N. Smith and others objected to the reception of this evidence on the ground that the title to the 178.80 acre- was not in controversy but only 35.18 acres the tract sued for Thus,

Opinion of Hon. J. T. Watkins, judge *ad hoc*. the question was put directly at issue as to whether the title to the entire tract known as Silver Lake was involved in that suit which is now pleaded in bar of this action or whether the question therein involved related only to that particular 35.18 acres for which Geo. A. Turner was sued. The same parties who now contend that the decision in that case constitutes the thing adjudged as to

22 the entire tract of 178.80 acres at that time successfully contended that nothing was at issue except the question of right of ownership of 35.18 acres. In his decision on that point the presiding judge said "The testimony of the above named witnesses was not heard because the petition claims only the number of acres of land held by or in possession of Geo. A. Turner the defendant; that the judgement in this case if for plaintiff could effect only the land held by Turner and the claim set up by the defendant Turner or by the railway whatever — may be does not make this a suit for more than the number of acres of land claimed by plaintiff which is about forty acres more or less and is shown by admission of counsel not to be worth more than $2000.00.

This ruling became final when the *aparties* on the questio- as to whether the entire "Silver Lake tract" was at issue in that case or only that part in possession of Geo. A. Turner because when the case was carried to the Supreme Court of the United States on a writ of error the attorneys for Robert N. Smith *et als.*, moved to dismiss the writ of error because as they contended there was no appellate jurisdiction in the Supreme Court as the only question at issue was the possession of 35.18 acres of land worth not over $2000.00, and there was no controversy relating to the entire tract of 178.80 acres worth $10,000.00. In concluding their motion to dismiss the writ of error they say: "It is therefore submitted that no competent question is raised upon this record except as to property worth about $2000.00 and therefore that the writ of error should be dismissed." The Supreme Court of the United States concurred in the view entertained by the counsel for Robert N. Smith *et als.*, and in the ruling of his honor Judge Boarman and dismissed the writ of error holding that no property was at issue, or could be affected by the judgment in the case except that particular tract of 35.18 acres sued for and claimed by the plaintiffs to be in the possession of Geo. A. Turner.

23 It is now asked of this court in this case that the judgement in suit No. 80 U. S. circuit court awarding Robert N. Smith *et als.*, the ownership of 35.18 acres of land be so extended as to cover the entire tract of 178.80 acres and to ignore that part of the same case in which it is decided by both the circuit court and the United States Supreme Court that the decision in that case in no manner involves the entire tract.

It is the opinion of the court that the judgement of the court in suit No. 80 is *res judicata* as to the 35.18 acres involved in that case but that it is not a bar to the claim of the plaintiff in this case in which the suit is to recover the remainder of the tract of land viz:— 178.80 acres *hence* less 35.18 acres; hence the plea of *res judicata* filed by the defendant herein is overruled.

While the record in this case as submitted is incomplete there is sufficient evidence on all the points raised in the pleadings to enable the court to determine the issue which becomes necessary on account of the expiration of the time allowed by the statutes in which cases are to be decided, which are taken under advisement.

In answering to the merits the defendants set up the patent issued by the State of Louisiana to W. W. Smith claiming title through him as heirs and vendees.

The plaintiffs meet this issue by averring that the patent of the State *of* Smith was originally null; that it was issued in error; that the $1.25 per acre paid *to* the State to W. W. Smith was tendered back to him; the entry was cancelled and a suit being brought by the State against W. W. Smith the patent was annulled. On these issues the record discloses the following facts: On April 30 1853 an act was passed by the legislature of this State authorizing the register of the State land office to sell the shallow lakes in this State

provided the sale should not be made until the lands had
24 become the property of the State and had been legally surveyed and the survey recognized.

This act was not promulgated until June 23 of 1853. Before its promulgation, viz:—on May 14th 1853 W. H. Crenshaw, register certified that W. W. Smith had purchased from the State and had paid $1.25 per acre for the shallow lake known as Silver Lake in the parish of Caddo, in township No. 18 ranges 13 & 14 being in the northwestern land district of Louisiana and containing 186.57 acres. The evidence shows that this area had not been surveyed and listed as required at that time.

The sale was made on May 14th 1853 and the patent issued February 24th 1855 as "Shallow Lake" pursuant to the above stated act of the legislature and was not claimed to be swamp and overflowed" land, following under this class of lands donated by Congress to the State of Louisiana and under which last named grant the defendants claim. The defendants rely solely on parol testimony to establish the fact that the lands claimed fall within the class of lands known as "swamp and over-flowed lands."

W. H. Crenshaw who is register of the State land office who W. W. Smith bought the land — was a witness in the case of The State of Louisiana *vs.* W. W. Smith. He testified that the land sold to Smith was never claimed as swamp land or sold as such. B. Harleson (who was register at the time) testified in that case Dec. 19th 1857 "In the warrant book there is opposite Smith's entry of Silver Lake the following words in the handwriting of W. H. Crenshaw, register to-wit.—This sale is cancelled because sold in error the law not having been promulgated June 6th 1853 (Sig.) Wm. H. Crenshaw, register."

The evidence of Mr. Crenshaw shows that the notice of cancellation was served on Mr. Smith. The evidence in the case of The State *vs.* Smith also shows a legal tender of the money which he had paid on Dec. 3rd 1857 the case of The State of Louisiana *vs.*
25 W. W. Smith was filed in the district court of Caddo parish to procure the cancelling of the patent issued to Smith. The petition in that case sets forth that the register issued the patent to W. W. Smith to Silver Lake containing 186.57/100 acres and Cross lake containing 21.18 acres in error.

1st. Because the law under which said entried had been made had not been promulgated at the date when said entries were made

2nd. Because said lake had not at the time of said entries been legally surveyed nor had the surveys been recognized by the State nor have they yet been.

3rd. Because the patent to Silver Lake was issued to L. J. Begur register in error of the fact that the law was not promolgated at the time of the entry and also in error of the other fact that the said entry had been cancelled before the law had been promolgated.

The answer to these allegations was filed by J. W. Smith adm'r succ'n of W. W. Smith on April 29th 1859.

This answer was a general denial *and* the claim that W. W. Smith had acquired all the rights which the State of Louisiana had on the trial of these issues the irregularities in the issuance of the patent, above enumerated, were shown, judgement was rendered Nov., 24th 1860 in favor of the State, cancelling the entry.

Orders of appeal wrre granted to J. W. Smith administrator returnable to the supreme court at Monroe for the 2nd Monday of July 1861.

The civil war being on the case was carried to Natchitoches and proceedings deferred until August 14th 1866. On that date the answer to the appeal was filed and the case was continued. On August 11th 1869 the case as pending in the supreme court was dismissed as is shown by the certificate of the clerk of the supreme court filed in the record in this case for the first time. This left the judgement in the district court signed by Judge W. B.

26 Egan cancelling the entry in full force on trial of the case of Robert N. Smith *et als. vs.* Geo. A. Turner, the V. S. & P. R. R. Co., substituted in the U. S. circuit court, all the proceedings above enumerated were shown, except the fact that the case had been dismissed by the supreme court. Through an error on the part of the clerk of the supreme court he signed a certificate on July 26 1886 stating that the case of The State *vs.* W. W. Smith had not been filed in the supreme court. This certificate was filed in the case of Robert N. Smith *vs.* Geo. A. Turner, causing the record in that case not only to show that the administration of the succ'n of W. W. Smith had filed his final account, and had been ordered discharged but that the case of The State *vs.* W. W. Smith had not been finally disposed of.

It is the opinion of the court that it is owing to the fact that the certificate above referred to indicated that no final decision had been rendered in the case of The State *vs.* Smith that caused the judge to hold in the case of Smith *vs.* Turner that the entry of W. W. Smith had not been cancelled.

In the case of The State of Louisiana *vs.* W. W. Smith the judgement annulling the title to W. W. Smith to "Silver Lake" and "Cross Lake" having become final it was not subject to be collaterally attacked. In the case of The Texas and Pacific R. R. Co. *vs.* Rob't W. Smith *et als.* on appeal to the U. S. circuit court of appeals the court says in speaking of the title of W. W. Smith "We find that entry to have been cancelled and annulled at the suit of the State and the adjudication therein gaving become final by the action of the highest court in the State."

They declared the title of the Smith heirs null, hence the entry of W. W. Smith having been cancelled by the register after notice and a legal tender by the State court and by the U. S. circuit court of appeals, the claim of title set up by his heirs and assigns cannot be sustained.

27 As the plaintiff in a petitory action must recover on the strength of his own title it becomes necessary to examine the

claim of title set up by J. H. McCormick, receiver, V. S. & P. R. R. Co.

By act No. 228 of the session of the legislature of La., for 1853 the V. S. & P. R. R. Co., was chartered.

On June 3rd 1856 Congress donated to Louisiana for the purpose of aiding in the construction of a railroad from the Texas line to Greenwood, Shreveport and Monroe to a point on the Mississippi river opposite Vicksburg, every alternate section addition of land for six sections in width on each side of said road.

In 1857 the State accepted the donation and granted the lands to the V. S. & T. R. R. Co., At the same session of the legislature the railroad company was authorized to mortgage the lands which had been granted.

The lands were duly selected and listed as required.

The identical numbers involved in this suit were certified to the V. S. & T. R. R. Co., by the U. S. Government Land Office Department October 3rd., 1859 by the Commissioners, and approved by the Secretary October 3rd., 1859. The road was to be built in sections of twenty miles and the grant was earned as the road was completed. That section from Shreveport to the Texas line on which the lands were located was completed within the required time. Pursuant to the authority given the legislature the road, including its lands, was mortgaged, John Ray September 1st., 1857 and pursuant to the decree in the case of H. R. Jackson *vs.* The V. S. & T. R. R. Co., the mortgage was foreclosed. The Vicksburg Shreveport and Pacific Railroad Company having been chartered by the legislature in 1877 the lands were transferred to them in 1879.

In the case of The Farmers Loan & Trust Co. *vs.* The V. S. & P. R. R. Co., J. H. McCormick was appointed receiver, of the V. S. & P. R. R. Co., representing the creditors of the R. R. Co. he has
28 been substituted in this case in lieu of The V. S. and P. R. R. Co., the original plaintiff herein. The proceedings and transfers relating to the tract of land in this suit from the U. S. Government to the State of Louisiana, from the State of Louisiana to the V. S. & T. R. R. Co., from the V. S. & T. R. R. Co., to the V. S. & P. R. R. Co., and to the receiver have been regular. The supreme court of this State held the title of the V. S. & P. R. R. Co., good to all the lands along its line, which had been granted in the case of The V. S. & P. R. R. Co., *vs.* Sledge and in the case of Mower *vs.* Kemp although the road had not been completed along its line of the lands involved in these suits within the required time.

On May 5th, May 14th, and June 17th 1858 the U. S. Land Office Department of Washington in passing on the identical tract of land involved in this suit decided that it belonged to the V. S. & T. R. R. Co.

In the case of John W. Carlin *vs.* The V. S. & T. R. R. Co., the Commissioner of the Land Office decided on March 20th 1872 that these lands fell within the R. R. grant, and the same decision was

rendered on March, 18, 1881 in the case of James A. King and Ambrose Martell *vs.* The V. S. & T. R. R. Co.

The title in the said R. R. company having been repeatedly adjudicated by the supreme court of this State and by Land Office Department at Washington, its title is considered to be perfect.

It is therefore ordered, adjudged and decreed that J. H. McCormick, receiver be declared the owner of lots one, two, three, four, five, six, seven, eight, and nine of section 31 township 18, north range 13, west containing 178.80 acres less 35.18 acres off this tract recovered by Robert N. Smith *et als* in their suit *vs.* Geo. A. Turner No. 80 in the U. S. circuit court 5th circuit, western district of Louisiana and particularly described in plaintiff's petition in this suit.

He is adjudged and decreed to be the owner and entitled to the possession of said land for said V. S. and P. R. R. Co. and
29 the assigns and transferees of the said company and it is ordered that writs of possession do issue.

The defendants are decreed *insolido.* to be in unlawful possession of the lands sued for herein and are so bound to pay all costs.

Pursuant to the agreement of all parties the question- of rents, revenue, taxes and improvements are held open for future adjustment by subsequent proceedings.

Done and signed at chambers by consent of all parties this 14th day of April, 1903.

J. T. WATKINS,
Judge 2nd District Court, Vice-Hon. A. D. Land, Judge 1st District Court, Caddo Parish, Recused.

In First Judicial Dist. Court, Caddo Parish, La.

V., S. & P. R. R. Co.
vs.
ALBERT TIBBS ET ALS. } No. 5231. Orders for Appeal.

All parties in this suit are granted orders of appeal suspensive and devolutive, returnable to the supreme court at New Orleans, La., on the 2nd Monday in May 1903, according to law.

The devolutive appeal bond is fixed at five hundred dollars the suspensive at ten thousand dollars and according to law.

Done and signed at chambers by consent of all parties at interest this 14th day of April A. D. 1903.

J. T. WATKINS,
Judge 2nd D. C., Vice-Hon. A. D. Land, Judge 1st D. C., Recused.

(Endorsed:) Filed: April 16th 1903. F. A. Leonard, clerk.

30 *Appeal Bond.*

STATE OF LOUISIANA, }
Parish of Caddo. }

Know all men by these presents, that we, A. H. Leonard, George A. Wilson, Susan Crenshaw wife of Alexander Crenshaw, joined and authorized by her said husband, and Alexander Crenshaw, J. Smith Keene, Horace Keene, Florence B. Speer wife of George L. Speer here-in joined and authorized by her said husband and George L. Speer joining and authorizing his said wife and J. Harcout Smith, Carrie Lee Smith, John S. Smith, W. H. Smith, Annie D. Smith, Edward Smith, Ernest Smith and Robert Smith, Eugene Duvall, William A. Duvall, George Duvall, and Nannie Duvall Van Dyke, wife of W. Lee Van Dyke, herein joined and authorized by her husband and W. Lee Van Dyke herein joining and authorizing his wife, and Cora Duvall Harris, wife of Caleb Harris herein joined and authorized by her husband, and Caleb Harris joining and authorizing his wife and Dillard Duvall, Pauline Susan Smith, George S. Smith, Edgar W. Smith, V. L. Smith, Herbert Smith, and Adelia K. Smith as guardian of the minors Ella H. Smith and J. Perrin Smith, and the said minors Ella H. Smith and J. Perrin Smith herein represented by their said guardian all parties defendants in the case of The Vicksburg Shreveport and Pacific Railway Company *vs.* Albert Tibbs *et al.*, Heirs of W. W. Smith and others substituted defendants, as principals, and W. P. Hall, L. M. Carter, P. J. Trezevant, sureties are held and firmly bound unto F. A. Leonard, clerk of the first judicial district court, Caddo parish, Louisiana, in the full sum of ten thousand dollars for payment of which well and truly to be made we bind ourselves, our heirs, and legal representatives, firmly and *insolido* by these presents.

Dated at Shreveport, Louisiana, this 18th day of April, 1903.

The condition of the above obligation is such that whereas the above bounden parties principals, defendants in said suit
31 have applied for and obtained an order for a suspensive and devolutive appeal from the judgement lately rendered against them by the honorable first judicial district court, Caddo parish, La., in the case of Vicksburg, Shreveport and Pacific Railroad Company *vs.* Albert Tibbs and others, Heirs of W. W. Smith and others substituted defendants number 5231 on the docket of said court, returnable to the honorable supreme court of Louisiana at New Orleans, La., on the 2nd Monday in May 1903 as fixed by the order of appeal made in said cause by said court and according to law: Therefore if the said parties principals shall well and truly prosecute their said appeal and shall satisfy whatever judgement may be rendered against them thereon or the same be satisfied by the proceeds of the sale — their estate real or personal, then this obligation

be null and void otherwise to remain in full force and effect, and the said surety shall be liable in their place.

A. H. LEONARD AND THE ABOVE NAMED PRINCIPALS,
By A. H. LEONARD, *Attorney*,
And by W. P. HALL, *Attorney*,
A. H. LEONARD, *Prro &c.*
W. P. HALL.
LEON M. CARTER.
PETER J. TREZEVANT.

(Endorsed:) Filed April 18th 1903. F. A. Leonard, clerk.

32 "A."

Admission of Counsel.

V., S. & P. R. R. Co.
vs.
ALBERT TIBBS ET ALS.

It is admitted, that of the parties made defendants herein Robert N. Smith, Elizabeth A. Smith wife of Marine Duval and said Duval were parties plaintiffs in the suit of R. N. Smith *vs.* Geo. A. Turner and the V. S. & P. R. R. Co. No. 80 on the docket of the U. S. court for the western district of La. that George R. Wilson and A. H. Leonard acquired an interest in the property known as Silver Lake tract and described in plaintiffs' petition — *x*case at bar, from the parties plaintiffs in the case of R. N. Smith *et als. vs.* Geo. A. Turner & V. S. & P. R. R. Co. and the other defendants are the heirs and legal representatives of William L. Smith, Elizabeth W. Smith and John S. Smith now deceased who were parties plaintiffs in said suit of R. N. Smith *vs.* G. A. Turner *et als.*

(Endorsed:) Filed in evidence in 5231 April 19th 1901. J. H. Levy, d'y clerk.

33 *Motion on Plea of Res Adjudicata.*

Supreme Court of the United States, October Term, 1889.

THE VICKSBURG, SHREVEPORT & PACIFIC R. R. Company, Plaintiff in Error,
vs.
ROBERT N. SMITH & Others.
No. 276.

Motion.

The defendants in error come and move the court to dismiss the above writ of error, for the reason that the matter therein in dispute does not exceed the sum of five thousand dollars, exclusive of costs.

The action was for recovery of possession of certain lands and was brought in the United States circuit court for western Louisiana in November, 1885.

The form of action was by petition and set forth (record folio I & c.,) that the petitioners were heirs of one W. W. Smith who in 1853 had purchased from the State of Louisiana a tract of land lying in the parish of Caddo and containing one hundred and eighty six acres known as "Silver Lake" "and that as such heirs the petitioners are owners of Spring Lake which is illegally withheld from them and a part of which containing forty acres or more is in the unlawful possession of George H. Turner of the said parish of Caddo and State of Louisiana and a citizen of said State, who refuses to deliver the said part of said land to your petitioners after amicable demand & etc., such part is stated to be worth at least six hundred dollars."

Upon being cited, Turner (folio 6) answered that in respect of his possession he was tenant of the Vicksburg Shreveport & Pacific Railroad Company and prayed that his lessor should be made defendant and he be discharged.

Accordingly (folio 8) this was dine, and (folio 10) the said
34 company duly cited.

(It may be well to state here although not necessary perhaps for any purpose of the present motion, that the title set up by the petitioners was, that, in 1853 W. W. Smith had purchased the land in question of the State as *swamp lands* granted to the latter by the United States, and that defendants denied that such lands were swamp lands, and alleged a title in themselves through the State, as donee from the United States for rail road purposes).

For defence the rail road company *excepted* (1st folio 19) to the allegation in the petition that the petitioners were heirs of W. W. Smith, and (2nd folio 21) that there was a former judgement. All the folios of record but a few are taken up with the evidence pertinent to such 2nd exception. Upon the disallowance of these exceptions it answered upon the merits (folio 161) and in the course of such answer stated (folio 163) "that the lands described in plaintiffs' petition and sought to be recovered in this suit is worth at least $10,000.00." And the conclusion of such answer prayed "for judgement decreeing the defendant company to be the owner of said land, and quieted in possession thereof, and for general relief."

Upon the trial the verdict was rendered as follows (folio 165) "We the jury, find for plaintiffs, and that the land sued for is described in the plot made (by) W. R. De Voe and filed in evidence."

By the judgement, (folio 168) the plaintiffs are declared to be the owners of the land in controversy and entitled to the possession of the same, said lands being known and described as follows: Commencing at a rock & etc. containing (folio 169) 35.18 acres situated in the parish of Caddo etc.

Six exceptions were filed (folio 173) 1 for refusal of defend-
35 ants' motion for continuance: (2) for rejection of certain tenders of evidence: and (4) to the details of the judgement.

As part of exception (2) signed by the judge below, it is stated that the company offered to show—

"That the land described and claimed by the plaintiffs in their petition under a certificate and patent from the State of Louisiana and which is claimed by the defendants under a grant from the United States Government to the State of Louisiana to aid said railroad and for which defendants prays judgement recognizing their ownership, &c. is worth the sum of $10,000 whereupon plaintiffs' counsel objected on the ground that they only part of Silver Lake tract of 186 acres that was in controversy in this suit was the part alleged to be in possession of the defendants Turner, and it was admitted by the counsel for the defendants that said part or parcel of land was not worth exceeding $2,000.00.)

In connection with exception 2 (above) the court states as follows:

"The testimony of the above named witness was not heard because the petition claims only the number of acres of land held by or in possession of George Turner the defendant, and the judgement in this case if for the plaintiffs could effect only the lands held by Turner and the claim set up by the defendant Turner or by the railway whatever it may be, does not make theirs a suit for more than the number of acres claimed by the plaintiff which is about forty more or less, and is shown by the admission of counsel not to be worth more than $2,000. If the suit involves title to the one hundred and eighty six acres of land then the land to be asse-d on is worth about $10,000, as is admitted by counsel for plaintiffs."

The record therefore shows an action of ejection in Louisiana for so much of a tract of 186 acres as was in the possession of one Turner, with a verdict and judgement therein in favor of the plaintiffs, the land in question being thereby ascertained as 35 18/100 acres which as was admitted by counsel for defendants below is worth only about $2,000.

If reference be had therefore to the ordinary condition of a defendant who becomes plaintiff in error, it is submitted that this writ must be dismissed. (Railroad *vs.* Bank, 118 U. S., 608, and see Bruce *vs.* Railroads, 117 U. S., 514.)

Probably however it will be suggested in behalf of the plaintiff in error that the present record shows certain peculiarities that prevent the application of the ordinary rule just stated.

For it appears that although the petition of the plaintiff demanded judgement against Turner, the original defendant for only so much of a tract of 186 acres as he possessed (viz., that ascertained by the judgement to be $35\frac{18}{100}$ acres) yet that after the railroad company, as Turner's lessor had been substituted as defendant inasmuch as it was in possession not only of Turner'- part but as well as of the whole 186 acres, and inasmuch also as the plaintiffs had alleged in their petition that they were owners of such 186 acres and were illegally deprived of its possession it was competent upon such record for the defendant to raise questions *as to such whole* admitted to be worth

$10,000 and that it *had done so* by asking in its answer for a decree *quieting* its possession and also for *further relief.*

If this be competent (and it is submitted *only then*) the matter in issue upon the record may in value exceed $5,000.

But this counter application for relief by the defendant (plaintiff in error) is not competent for the reason that the ground thereof (quiet possession, &c.) is an equitable right merely. More particularly the present objection is that (probably because of the Louisiana system of law) the defendant in a court of the United States seeks to ignore the fundamental distinction between *common law* and *equity* and have a court pass upon and administer claims (raising value & etc. above $5,000) which at most are only *equitable*
37 and which have been asserted by a defendant in a case standing upon the law docket and brought to enforce a common-law right.

The present case therefore is the converse of Hurt *vs.* Hollingsworth, (100 U. S., 100) in which this court held (in accordance with the long established principles) that a bill to quiet title to land could not, in a Federal court sitting in Texas be met by answer asking for possession of the same land (although in the courts of that State such proceedure might have been competent). (Sheirburn *vs.* Cordova, 24 Howard, 423.)

*I*s is therefore submitted that no competent question is raised upon this record except as to property worth about $2,000 and therefore that the writ of error should be dismissed.

A. J. FALLS,
S. F. PHILLIPS,
For the Motion.

(Endorsed:) Office Supreme Court U. S. Filed Jan. 10 1887. James H. McKenney clerk.

38 Supreme Court of the United States.

I, James H. McKenney, clerk of the Supreme Court of the United States do hereby certify that the foregoing typewritten pages numbered from one to five inclusive contain a true copy of the motion to dismiss in the case of The Vicksburg Shreveport & Pacific R. R. Co., plaintiff in error. *vs.* Robert N. Smith and others No. 276 October term 1889, as the same remains upon the files of said Supreme Court.

In testimony whereof I hereunto subscribe my name and affix the seal of said Supreme Court at the city of Washington this 9th day of November A. D. 1900.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

(Endorsed:) Filed in evidence in 5231 April 19 1901. J. H. Levy d'y clerk.

39 *Minutes of Court.*

STATE OF LOUISIANA,
Parish of Caddo.

Be it remembered that the regular civil term of the first judicial district court of the State of Louisiana held in and for the parish of Caddo was begun and held at the court house in the city of Shreveport in said parish on Monday June 15th 1896 it being the third Monday in said month when the following orders were made and proceedings had to-wit:

Present: His honor A. D. Land, judge presiding: J. S. Young sheriff: and F. A. Leonard, clerk.

SHREVEPORT, LOUISIANA, TUESDAY, *June* 16, 1896.

Court met pursuant to adjournment.

His honor A. D. Land judge presiding.

The minutes of yesterday were read and approved in open court:

V., S. & P. R. R. Co.
vs.
ALBERT TIBBS ET ALS. } 5231.

His honor Judge Land on account of interest, recuses himself and appoints his honor Judge Watkins of the 2nd district to try this case.

STATE OF LOUISIANA,
Parish of Caddo.

Be it remembered that the regular term of the first judicial district court, in and for the first district of Louisiana was begun and held at the court house in the city of Shreveport, Louisiana on Monday September 5th 1898 it being the first Monday in said month:

Present: His honor A. D. Land judge presiding, J. S. Young, sheriff and F. A. Leonard, clerk:

SHREVEPORT, LOUISIANA, TUESDAY, *December* 20, 1898.

Court met pursuant to adjournment.

His honor A. D. Land, judge presiding:

The minutes of yesterday were read and approved in open court:

40 His honor Judge J. T. Watkins assumes the bench:

His honor Judge A. D. Land being recused:

V., S. & P. R. R. Co.
vs.
ALBERT TIBBS ET ALS. } 5231.

Default against all defendants.
Leave granted all parties to take testimony generally in and out of the State.

SHREVEPORT, LOUISIANA, SATURDAY, *January* 21*st*, 1899.

Court met pursuant to adjournment:
His honor A. D. Land judge presiding:
The minutes of yesterday were read and approved in open court:

V., S. & P. R. R. Co.
vs.
ALBERT TIBBS ET ALS. } 5231.

Petition making parties filed:

STATE OF LOUISIANA }
Parish of Caddo. }

Be it remembered that the regular term of the first district court of Louisiana held in and for the parish of Caddo, was begun on the third day of September 1900 at the court house in the city of Shreveport in said parish it being the first Monday in said month when the following orders were made and proceedings had to-wit:—
and F. A. Leonard clerk:
Present: His honor A. D. Land judge presiding: S. J. Ward sheriff

SHREVEPORT, LOUISIANA, THURSDAY, *Nov.* 8, 1900.

Court met pursuant to adjournment:
His honor A. D. Land judge presiding:
The minutes of yesterday were read and approved in open court:
His honor J. T. Watkins, judge assumes the bench:

V., S. & P. R. R. Co.
vs.
ALBERT TIBBS ET ALS. } 5231.

Plea of *res adjudicata* & estoppel filed.

SHREVEPORT, LOUISIANA, FRIDAY, *April* 19*th*, 1901.

Court met pursuant to adjournment:
His honor A. D. Land judge presiding:
41 The minutes of yesterday were read and approved in open court.
His honor J. T. Watkins, judge presiding.

V., S. & P. R. R. Co.
vs.
ALBERT TIBBS ET ALS. } 5231.

Plea of *res adjudicata* taken up, argued and plea overruled.

STATE OF LOUISIANA,
Parish of Caddo.

Be it rememberred that the regular term of the first district court of Louisiana was begun and held in and for the parish of Caddo at the court house of said parish in the city of Shreveport, on Tuesday the 2nd day of September 1902, it being the first Tuesday after the first Monday in said month, the first Monday being a legal holiday when the following proceedings were had to-wit:

Present: His honor A. D. Land judge presiding, S. J. Ward sheriff and F. A. Leonard, clerk:

SHREVEPORT, LOUISIANA, SATURDAY, *February 7th*, 1903.

Court met pursuant to adjournment:
His honor A. D. Land judge presiding:
The minutes of yesterday were read and approved in open court.

V., S. & P. R. R. Co.
vs.
ALBERT TIBBS ET ALS. } 5231.

Answers of heirs of Smith and Geo. A. Wilson filed.

SHREVEPORT, LOUISIANA, WEDNESDAY, *February 11th*, 1903.

Court met pursuant to adjournment:
His honor A. D. Land judge presiding:
The minutes of yesterday were read and approved in open court.

V., S. & P. R. R. Co.
vs.
ALBERT TIBBS ET ALS. } 5231.

His honor J. T. Watkins presiding.
Default against all defendants, except those who have answered.
Case set for Monday February 23rd 1903.

42 SHREVEPORT, LOUISIANA, MONDAY, *February 23rd*, 1903.

Court met pursuant to adjournment.
His honor A. D. Land judge presiding.
The minutes of yesterday were read and approved in open court.
His honor Judge J. T. Watkins presiding.

V., S. & P. R. R. Co.
vs.
ALBERT TIBBS ET ALS. } 5231.

Answer of A. H. Leonard filed. Appearance of C. C. Harvey filed.

Plea of *res adjudicata* filed.

Evidence adduced and continued for argument.

SHREVEPORT, LOUISIANA, TUESDAY, *February* 24, 1903.

Court met pursuant to adjournment.

His honor A. D. Land judge presiding.

The minutes of yesterday were read and approved in open court.

His honor Judge J. T. Watkins presiding.

V., S. & P. R. R. Co.
vs.
ALBERT TIBBS ET ALS. } 5231.

Case argued and submitted on briefs to be filed.

SHREVEPORT, LOUISIANA, THURSDAY, *April* 16*th*, 1903.

Court met pursuant to adjournment.

His honor A. D. Land judge presiding.

The minutes of yesterday were read and approved in open court.

His honor Judge Watkins presiding.

V., S. & P. R. R. Co.
vs.
ALBERT TIBBS ET ALS. } 5231.

Judgement plaintiff see decree. Appeal granted to supreme court suspensive and devolutive returnable 2nd., Monday in May, 1903, suspensive bond $10,000.00 devolutive $500.00.

43 STATE OF LOUISIANA, }
Parish of Caddo. }

I hereby certify that the above and foregoing pages numbered from 1 to 135 includes a true and correct copy of all the pleadings, oral evidence and documents filed in evidence in the case entitled V. S. & P. R. R. Co., *vs.*, Albert Tibbs *et als.*, No. 5231 on the docket of the first district court of Caddo parish Louisiana.

And I further certify that the documents filed in evidence to be attached to the transcript in their original form as per agreement of counsel, contained in the foregoing transcript have been attached to the transcript and made part thereof.

Given under my hand and seal of office in the city of Shreveport, Caddo parish, Louisiana on this the fifth (5th) day of May A. D. nineteen hundred and three (1903)

J. H. LEVY,
[SEAL.] *Deputy Clerk First District Court of La.*

44 *Evidence on Plea of Res Adjudicata.*

In the First District Court, Caddo Parish, Louisiana.

V., S. & P. R. R. Co.
vs.
A. S. TIBBS ET AL. } No. 5231.

Appearances.

For plaintiffs: Messrs. Wise & Herndon.
For defendants: Messrs A. H. Leonard and D. T. Land.

Be it remembered, that on the trial of the above styled and numbered cause, on the 19th day of April, 1901, in the April term of the first judicial district court of Louisiana, holding sessions of court in and for Caddo parish, before his honor, Judge Watkins, at Shreveport, the following evidence: was taken on plea of *res adjudicata.*

Evidence on Behalf of Plaintiffs.

Counsel for defendants offered in evidence admission. Filed and marked Exhibit "A."

Also offered in evidence transcript of record in the Supreme Court of the United States, of October 1889, V. S. & P. R. R. Co. *vs.* R. N. Smith *et al.* Filed in evidence and marked Exhibit "B."

Also offered — evidence the record in suit of R. N. Smith *et al. vs.* Geo. A. Turner *et al.*, No. 80, on the docket of the U. S. circuit court, western district of Louisiana, of which the transcript offered is the transcript.

It is agreed that in case of appeal the transcript offered in evidence may be used as the original in the appellate courts.

Evidence closed

J. H. LEVY, *D'y Cl'k.*

5 duplicate.

[Endorsed:] 5231. V. S. & P. R. R. Co. *vs.* Albert Tibbs. Evidence on plea of *res adjudicata.* Filed April 19, 1901. J. H. Levy d'y cl'k.

45 "A."

Agreement of Counsel.

District Court, Caddo.

V., S. & P. R. R. Co.
vs.
TIBBS ET ALS. } No. —.

It is agreed that the issues as to the rents and revenues and as to reconventional demand for taxes raised in above suit shall be and are reserved for future hearing without prejudice to any rights either party may have under such issues.

(Endorsed:) Filed in evidence in 5231 February 23rd 1903. J. H. Levy, d'y clerk.

46 *Agreement of Counsel.*

V., S. & P. R. R. Co.
vs.
TIBBS ET ALS. } No. 5231.

It is agreed that the printed record in case V. S. & P. R. R. Co., pl'ffs on error *vs.* R. N. Smith *et als.* shall be filed in above cause and that parties to this suit may select therefrom such portion thereof as each may desire to offer in evidence and make list thereof to be filed in record, each party reserving the right to object to admissibility of evidence, with right to either party to add other testimony relevant and admissible.

W. H. WISE &
E. B. HERNDON AND
F. P. STUBBS,
Att'ys for Pl'ffs.
A. H. LEONARD,
Attorney.

(Endorsed:) "B" Filed in evidence in 5231 Feb'y 23rd 1903. J. H. Levy, d'y clerk.

47 *Agreement of Counsel.*

In First District Court, Caddo Parish, La.

V., S. & P. R. R. Co.
vs.
TIBBS ET ALS.

In this case it is agreed that the acts of Congress and of the legislature of Louisiana offered in evidence shall not be copied in the transcript but the printed acts as published shall be used.

It is further agreed that the document marked "L" being the act of mortgage and decree of foreclosure in case of Farmer- Loan and Trust Co. *vs.* V. S. & P. R. R. Co., No. 216 in C. C. U. S. western dist. La. be not copied in transcript but go up in its printed form as filed and marked "L."

And the original patent from the State to W. W. Smith be copied in the transcript.

This April 23rd 1903.

FRANK P. STUBBS,
W. H. WISE,
Att'ys for Plaintiff.
E. W. SUTHERLIN,
A. H. LEONARD,
W. P. HALL,
Att'ys for Defendants.

(Endorsed:) Filed April 23, 1903. J. H. Levy, d'y clerk.

48 "C."

List of Lands Certified to V., S. & P.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *December* 13", 1887.

I, S. M. Stockslager acting Commissioner of the General Land Office do hereby certify that the annexed copy of the list of lands, I, certified to the State of Louisiana October 7th 1859 for the Vicksburg Shreveport and Texas Rail Road Company under the act of Congress approved June 3rd 1856 and aggregating 52,564.17 acres is a true and literal exemplification from the original in the archives of this office excepting such annotations as have been made thereon by this office subsequent to the certification.

In testimony whereof I have hereunto subscribed my name and

cause the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.] S. M. STOCKSLAGER,
Acting Commissioner of General Land Office.

49 List No. 1.

Approved October 7th, 1859.

List of all the tracts noted as lands not reverted sent to R. & R. at Natchitoches December 13th, 1872.

Also copy of list embracing said tracts sent to Honl. Frank Morrey gen'l agent of company Dec. 18th 1872.

Certified copy of whole list sent to Honl. Frank Mor-ey April 25th 1873.

Posted in tract books.
17th Nov. 1859.
Dv. N.

50 Vicksburg, Shreveport and Texas rail road.

List of lands within the district of lands subject to sale at *Natchitoches within the six mile limits* granted to the State of Louisiana by act of Congress approved the third day of June 1856, entitled "An act making a grant of lands to the State of Louisiana to aid in the constructions of railroads in said State." being the vacant and unappropriated lands in the alternate sections designated by odd numbers for six sections in width on each side of the rail road from the Texas line in the State of Louisiana west of the town of Greenwood via Greenwood, Shreveport and Monroe to a point on the Mississippi river opposite Vicksburg."

51 North of base line and west of the principal meridian.

Vicksburg, Shreveport and Texas Railroad list.

6 miles limits office at Natchitoches.

No.	Parts of section.	Sec.	Tp.	Range.	Acres.
188	Lots 1, 2, 3, 4, 5, 6, 7, 8, 9	31	18	13	178.80

52 (Within the six mile limits)

GENERAL LAND OFFICE, *3rd October*, 1859.

I, Joseph S. Wilson acting Commissioner of the General Land Office do hereby certify that the foregoing on pages one to seven inclusive is a true and correct list of the tracts of land within the six mile limits granted to the State of Louisiana by the act of Congress approved 3rd June 1856 entitled An act making a grant of lands to the State of Louisiana to aid in the construction of raio roads in said State within the district of lands subject to sale at Natchitoches Louis-

iana, being the vacant and unappropriated lands in the alternate sections designated by odd numbers for six sections in width on each side of the rail road from the Texas line in the State of Louisiana west of the town of Greenwood Shreveport and Monroe, to a point on the Mississippi river opposite Vicksburg and known as the Vicksburg Shreveport and Texas rail road within the State of Louisiana and they are now submitted for the approval of the Secretary of the Interior, in accordance with the requirements of said act of June 3rd 1856 subject to all of its conditions and to any valid interfering rights which may exist to any of the tracts embraced in the foregoing list.

In testimony whereof I have hereunto subscribed my name and caused the seal of the General Land Office to be affixed at the city of Washington the day and year first above herein written.

[SEAL.] JOS. S. WILSON,
Acting Commissioner.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *October 7th*, 1859.

Approved subject to the conditions and rights above mentioned.
J. THOMPSON, *Secretary.*

(Endorsed:) "C" Filed in evidence in 5231 Feb'y 23 1903 J. H. Levy d'y clerk.

53 UNITED STATES OF AMERICA,
State of Louisiana, Town of Monroe,
Parish of Ouachita.

Charles Gliden Young, president of V., S. & T. R. R. Co.—Special mortgage to John Ray.

Be ot known that this day before me Benjamin D. Sheppard recorded and *ex-officio* notary public in and for the parish of Ouachita, and State of Louisiana duly commissioned and qualified personally came and appeared Charles Glidden Young president of the Vicksburg Shreveport and Texas Rail Road Company a duly incorporated institution of this State and herein acting in his capacity by virtue of and in pursuance of a resolution of the board of directors of the said company passed on the 31st day of August *unto* which resolution (a duly certified copy whereof is hereunto in the margin annexed for reference) is in the words and figures following to-wit:

Resolved that the president be and is hereby authorized and instructed to issue two thousand bonds of the Vicksburg Shreveport and Texas Rail Road Company redeemable in twenty years from the first of September one thousand eight hundred and fifty seven for one thousand dollars or two hundred and twenty five pounds ster-

ling each bearing interest at the rate of eight per cent. per annum payable semi-annually in coupons of forty dollars of nine pounds sterling each the principal and interest of said bonds being made payable in New Orleans, New York, or London as the president by his endorsement may determine.

Resolved that the president be and he is hereby further authorized and instructed to secure the payment of said bonds and of the interest thereon by a first mortgage on the rail road of the company its lands property rights franchises warehouses depots, waterstations,
locomotives, and other appurtenances and also to include in said
54 mortgage the lands being four hundred twenty thousand nine hundred and twenty four acres more or less donated by the Congress of the United States to the State of Louisiana by act approved on the 3rd of June 1856 and accepted by the legislature of this State and conveyed to this compan- to aid in the construction of its road by an act entitled "An act to accept in part of the grant and to carry into execution the trust conferred upon the State of Louisiana by an act of Congress making a grant of land to aid in the construction of rail roads in said State approved June 3rd 1856 approved March 11 1857 with all the rights and interests of this company thereunto belonging or in any wise appertaining in favor of John Ray or any holder of said bonds or any of the interest coupons thereof "which said appearers declared that in pursuance of the above recited resolution and also by virtue of the authority conferred upon the said company by its charter and by the laws of the State of Louisiana specially authorizing the same, he has this day issued two thousand bonds of the said Vicksburg Shreveport and Texas Rail Road Company redeemable on the first day of September 1877 one thousand eight hundred and seventy-seven for the sum of one thousand dollars, one hundred and twenty-five pounds sterling, each bearing interest at the rate of eight per cent. per annum payable semi-annually in the coupons of forty dollars or nine pounds sterling each the principal and interest of said bonds being payable in New Orleans New York or London as he the said president by his endorsement may determine.

Now therefore in consideration of the premises and in order to secure the full faithful and punctual payment and redemption of each and all of the said bonds issued as aforesaid to any and all future holders or holders thereof and to each and every one of them when the same shall become due and payable together with the interest accruing thereon in the manner and at the periods of time
herein above stipulated and as evidence of the coupons at-
55 tached to the said bonds respectively, the said Vicksburg Shreveport and Texas Rail Road Company does by its president the said Charles Glidden Young grant in favor of John Ray of the town of Monroe parish of Ouachita and State of Louisiana as well as in favor of all and every other person or persons whomsoever who may become the holders of said bonds or *compounds* or any of them a first mortgage lien and privilege upon its entire rail

road extending from "a point on the Mississippi river opposite Vicksburg to the line of boundary separating the State of Louisiana and Texas by way of Monroe and Shreveport a distance and length of one hundred and ninety miles more or less including as well the unfinished portions and now in progress of construction in pursuance to the charter as that which is already completed and also all of its rights of *of* way, lands property, franchises, rights and appurtenances water stations ware houses, depots and depot grounds and also all the buildings stations and improvements which have been or may be hereafter erected thereon and all and singular the cars, locomotives engines wagons machinery fixtures, utensils, implements and effects generally a l of every nature and description whatever in use upon said ra road or in any way attached or appetaining to the same or hich may hereafter be placed upon or become attached to said rail road in any way manner and for any purpose without any exception or resolution whatever.

Under the head of the lands in this act of mortgage it is intended to include all the lands acquired in any way by the company either by purchase, donation or otherwise for any purpose whatever for roght of way, depot ground or for sale with a view to propit as for town lots or otherwise and it is especially intended to include the lands together with all the company rights and interests thereunto being some four hundred and twenty thousand nine hundred and twenty four acres more or less donated by the Congress of the
56 United States to the State *State* of Louisiana by act approved on the 3rd of June 1856 and granted to this company to aid in the construction of its road by the State of Louisiana by an act entitled "An act to accept in part of their grant and carry into execution the trust conferred upon the State of Louisiana by an act of Congress making a grant of lands to aid in the construction of rail roads and contiguous thereto and within fifteen miles on either side of the road connecting from the center of the road and such as is or may be located and approved by the proper authorities of the United States.

The said company promisses by its president not to alienate or in manner incumber or effect the same to the prejudice of this mortgage.

It is expressly understood and agreed between the contracting parties to this act that the company shall have the right to sell all or any portion of its lands herein mortgaged not necessary for the uses of the rail road either for cash or for the bonds issued under this act of mortgage and which are intended to be secured by it or upon a credit upon such terms as the president and board of directors may from time to time determine provided that when the bonds are received in payment for lands sold they shall be cancelled and when payment is made in cash for lands sold whether on time or otherwise the proceeds shall be used for the purchase of the said bonds which bonds shall be cancelled as before mentioned and in either case the presentation of the bonds so cancelled to the recorder

of mortgages shall be sufficient authority for him to release the particular tract or tracts of land so sold from all liability and incumbrances on account of this mortgage so as to enable the said rail road company to vest in the purchasers a clear, unincumbered complet- and unde-asible title it is expressly agreed and understood that the proceeds of the sale of these lands shall be faithfully ap-*preciated* to the purchase and redemption of these bonds and when so purchased the bonds shall be cancelled and the number of
57 each cancelled bond shall be entered and recorded by the recorder of mortgages in the proper book for the recording of the release of mortgages for the parish of Ouachita together with a record of the particular tract or tracts of land to be released thereby from the liabilities of this mortgage.

It being expressly understood and agreed that this mortgage is not to be released on any part of the property herei- mortgaged until the proceeds of the sales of such parts of the mortgaged property shall be interested in said bonds, and these bonds cancelled and recorded as above and herein stipulated.

It is distinctly understood that all of the said bonds are before the issuing thereof to be severally marked "*Ne varietur*" and countersigned by the said notary for the purpose of more effectually identifying the same herewith.

By reference to the annexed certificate of the recorders of mortgages in parishes of Ouachita, Madison, Carroll, Franklin, Morehouse, Jackson, Bienville, Claiborne, Bossier, and Caddo respectively traversed by the said railroad *and* which said lands and property *is* situated it will appear that there exists no mortgage or incumbrance whatsoever inscribed on the said railroad franchises or appurtenances or upon any of the lands or property owned by the saod corporation.

Thus done, signed and passed in the town of Monroe, in the parish and State aforesaid in the presence of Robert F. McGuire and Charles H. Morrison, competent witnesses who hereto subscribe their names together with the said parties contracting and the undersigned notary on this first day of September one thousand eight hundred and fifty-seven.

CHARLES GLIDDEN YOUNG,
President of the Vicksburg, Shreveport and Texas Rail Road Company.
JOHN RAY.

58 Attest:
ROBERT F. McGUIRE,
CHARLES H. MORRISON.

Signed sealed and acknowledged and delivered in the presence of the subscribing witnesses and me the said notary on the date above.

B. D. SHEPPARD,
Recorder and Ex-officio Notary Public.

STATE OF LOUISIANA, }
Parish of Ouachita. }

I, C. C. Madden clerk of the 5th district court and *ex-officio* recorder and *ex-officio* notary public in and for the said parish and State do hereby certify the above and foregoing eight pages is a true and complete copy of said act of mortgage duly recorded in Mortgage Book "E" page 33 *et seq.* of the records of this parish.

In witness whereof I hereunto sign my name and affix my seal of office this 18th day of April 1895.

[SEAL.] C. C. MADDEN, *Clerk.*

(Endorsed:) Filed in evidence in 5231, Feb'y 23 1903. J. H. Leby, d'y clerk. "D"

59 *Decree.*

U. S. Circuit Court, Dist. of La.

JACKSON ET ALS. }
vs. } No. 5033.
V., S. & T. R. R. Co. }

Circuit Court of the United —, District of Louisiana.

HENRY R. JACKSON ET ALS. }
vs. }
THE VICKSBURG, SHREVEPORT AND TEXAS RAIL ROAD COMPANY, }
North Louisiana and Texas Rail Road Company, *et als.* }

This cause came to be heard on the pleadings and testimony, orders, reports, decrees, mandates of the Supreme Court of the United States and upon a motion, for a sale of the mortgaged property in accordance *in* the opinion of the supreme court and the counsel of the respective parties was present when the cause was submitted.

The court upon consideration of the matters submitted orders and decrees.

1st. That the report of the master which determines the number and amount of the bonds and coupons validly issued by the Vicksburg Shreveport and Texas Rail Road Company and secured by the mortgage of the company bearing date the first day of September A. D. 1857. and his report rejecting cert-in bonds preferred as charging that company because not validly issued, and the repor- ascertaining the property included in the mortgage and all of the orders of the supreme court affirming the validity of the mortgage, its extent and operation and excluding the claims of the defendants from claiming the property by virture of the sheriff sale made February 3rd 1866 remain in full force and they form a part of this decree as

if repealed herein and the sale of sai- property is hereby ordered in pursuance of the decree made by the Supreme Court of the United States and for the purposes therein directed.

2nd. The court orders and decrees that F. A. Woolfley master heretofore acting in this suit shall make the sale of said property and that he shall fix the time of sale to take place on or
60 before the first day of December A. D. 1879., and that he shall advertise the sale of the rail road of the Vicksburg Shreveport *Shreveport* and Texas Rail Road Company described in the mortgage filed in this cause whether constructed or to be constructed with all the rights privileges, franchises and immunities thereby granted with all the rights of way track, ware houses, depots and real and personal property and all the additions and ameliorations and improvements constructions and works made by the defendants or any of them while they occupied the same, and all the appurtenances thereto whatsoever *is* embraced in the mortgage in order to satisfy the amount die the complainants and other bond holders holding valid bonds secured by said mortgage said sale however to be made subject to the lien claim and privilege of t-e defendants for the amount due to them for ameliorations improvements and repairs as herein after specified.

The advertisement of sale shall be inserted three times a week in a news paper in New Orleans Atlanta Georgia and the city of New York for six consecutive weeks before the sale. The sale shall be conducted under the direction of the master and the whole property shall be sold in bulk to the highest bidder for cash. The sale shall be made at the time appointed in front of the custom house in the city of New Orleans between the hour of noon and three o'clock p. m., the master may appoint a crier at a fee not to exceed the sum mentioned in the order of the court in 1877 he shall superintend the sale see that it is fairly conducted and shall when completed and ready for confirmation report the same to the court with all facts material to aid the court in further proceedings in this suit and for the consummation of the sale.

3rd. The court orders and decrees that at the sale the master may require any bidder during the progress of the sale and before adjudication to deposit a sum of money sufficient to cover all the costs of the suit and the sale with the receiver's charges on
61 the property not to exceed sixty thousand dollars.

And in case of refusal or failure so to do he may disregard the bid and proceed with the sale as if the same had not been made by the party making the same. The master shall have power to adjourn *i* the sale in case of epidemic or other urgent cause for any period not exceeding thirty datys by openly proclaiming said adjournment at the time and place fixed for sa-d sale without any re-advertisement thereof.

4th. The court orders and decrees that in case a majority or any greater number of holders of bonds shall make an agreement to purchase the property at the sale for the benefut *if* themselves and

such other bond holders as shall assent to the agreement within fifteen days after the sale and shall before the sale deposit the said bonds with the master to be kept till after the coonsum-ation of the sale. The committee of agent of such association may bid at the sale on their behalf and if they are the highest bidders shall not be required to pay at the time of sale any more of cash than the amount of the fund above fixed to pay the costs and charges of the suit and of the property as above mentioned and the said committee or agent shall have credit upon the bid made by them in proportion due to the holders of the bond who are or who may become parties to the agreement and shall not be required to pay the sum due to the non-assenting bond holders until fifteen days after the sale or on confirmation of the report.

5th. The court further orders and decrees that the master shall before the sale require the receiver to make a settlement of hi- accounts as receiver, and ascertain the balance due from or to him if there be be found a balance in his hands or due from him after paying all his expenses and compensation said balance shal- constitute a part of the fund for the payment of the said valid bonds secured by said mortgage to be added to the proceeds of sale of said rail road
62 and property and shall be paid into court as a part of the said cash fund for paying costs and cgarges. If there be found a balance due to him the same shall be payable out of the proceeds of said cash fund required to be paid into court by the purchaser.

The court further orders and decrees that all costs charge- and expenses of suit incurred by the plaintiffs or any of them in the cause including counsel fees (except the costs which the defendants were adjudged to pay by the decree of this court made March 22 1875) and all costs charges and expenses in the cause including counsel fees incurree by any parties since the first decree made herein by the Supreme Court of the United States (except the attorneys' counsel, and witness fees of the defendants which the defendants are themselves to pay) shall be paid out of the said cash fund to be pa-d into court as aforesaid and the said master is directed to take and state an account of the same before the said sale giving notice to the parties or their solicitors in this behalf.

6. The court orders and decrees that the master shall cause to be erased from the records of mortgages all mortgages which have been placed on this property by any defendant in this suit since the first day of December A. D. 1866 and all mortgages prior or subsequent to that date until this date and that all questions in respect to the same shall be reserved for hearing in this court prior to the confirmation of the sale and delivery of possession to the purchasers at the sale.

7th. The court orders and decrees that pursuant to the mandate of the Supreme Court of the United State- -n which this decree is entered The North Louisiana and Texas Rail Road Company defendant in this cause is entitled *for* constructions, works, and additions and necessary expenses for the preservation of the property made

by the defendants or some of them in this case in the sum of two hundred and ninety four thousand six hundred and six 08/100 dollars with five per cent. per annum interest thereon from
63 the 13th day of April 1875 until the same shall be paid as hereinafter mentioned the same to operate and be a first and paramount lien and privilege upon the entire rail road and property of the Vicksburg Shreveport and Texas RailRoad Company including all the property directed to be sold under this decree and that the said sum with interest as aforesaid shall be paid into this court on or before the first day of March A. D. 1880 for the use of the said North Louisiana and Texas RailRoad Company or the owner of assignee of said judgement an amount and in case of failure to make the payment as above provided the said company or the owner and assignee of the judgement shall be at liberty to obtain an order from the court to require the master to make a re-sale of the property for cash to the highest bidder to pay the judgement in favor of the North Louisiana and Texas RailRoad Company and the costs of the re-sale fater thirty days' advertisement in the news papers at the places stipulated for the first sale, said property to be sold by the master at the doors of the custom house at the city of New Orleans between the hours of twelve m. and three p. m. on the day of sale and the price to be paid on the day of sale and immediatelt after the property is struck off to the bidder in failure whereof the property to be re-offered for sale on the same day and without further notice.

8th. It is further ordered and decreed that the North Louisiana and Texas Railroad Company or the owner or assignee of the judgement in favor of said company may bid at said last mentioned sale and use the said judgement as cash in payment of such bid.

9th. It is further ordered and decreed that the master shall stipulate in the deed to be made to the purchaser at the first sale that the lien, privilege and mortgage in favor of the North Louisiana and Texas Railroad Company or the owner or assignee of said judgement of said company to secure the payment of said judgement with interest and costs resulting from a re-sale if
64 necessary shall be retained on the railroad and other property of the Vicksburg Shreveport and Texas Railroad Company sold under this decree and that the purchaser at the first sale shall agree and obligate himself not to sell alienate mortgage or encumber any of said property to the prejudice of said lien privilege and mortgage and that the said railroad and property shall be seized by the master immediately upon the failure of the purchaser tp pay the amount of the judgement and interest as aforesaid and be solfd after thirty days' advertisement as aforesaid whether the property remains in the purchaser at the first sale or not, no immediate sale teansfer or possession in any other party to prevent the seizure and sale.

10th. It is further ordered and decreed that the defendants pay the costs of their own attorneys, counsel and witnesses incurred since

the 22 March A. D. 1875 in accordance to the opinion of the supreme court.

Atlanta, Georgia, July 3rd, 1879.

(Signed) W. B. WOODS,
Circuit Judge.

CLERK'S OFFICE.

A true copy of the original received and filed this day.

Witness my hand and seal of said court at the city of New Orleans this 5th day of July 1879.

F. A. WOOLFLEY, *Clerk.*

(Endorsed:) Filed in evidence in 5231 Febr'y 23 1903. J. H. Levy, d'y clerk.

65 *Letters from General Land Office.*

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *March 10th*, 1893.

I, W. M. Stone Commissioner of the General Land Office do hereby certify that the annexed copies of letters from pages one to twenty-one inclusive pertaining to the grant for the Vicksburg Shreveport and Texas Railroad Company and the withdrawal of lands from market within the limits of said grant are true and literal exemplifications of the copies of the original letters of record in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed at the city of Washington on the day and year above written.

W. M. STONE,
Commissioner of General Land Office.

66 By telegraph.

GENERAL LAND OFFICE, *May 31st*, 1856.

Reg. & recorder, Monroe, Louisiana, W. T. S. by tel.:

You will suspend from sale and location until further orders all the lands in your district, situated in township- 15 & 20 inclusive which lie west of range 7 E., and ths. 14 to 19 inclusive between range 6, E. and the Mississippi river.

Acknowledge the receipt of this dispatch by telegraph and mail.

THOMAS A. HENDRICKS,
Commissioner.

By telegraph.

GENERAL LAND OFFICE, *May* 31*st*. 1856.

Reg. & rec'd'r, Opelousas, Louisiana, W. T. S. by tel.:

You will suspend from sale and location until further orders all the lands in your district, situated north of the base line and west of the meridian also the following townships tps. 1. N. range- 1 & 2 east tps. 1 to 6 south inclusive, range- 1 & 2 west tps. 1 to 4 south inclusive range- 3, 4 & 5 west tps. 1 & 2 south of range- 6 & 7 west tps. 1 to 8 south inclusive range- 1 & 2 east tps. 2 to 11 south inclusive of range 3 east.

Tps. 2 to 13 south inclusive of range 4 east.

Tps. 4 to 14 south inclusive of range 5 east.

Tps. 4 to 15 south inclusive of range 6 east and all the townships east of range 6 east and south of township 5 south

Acknowledge the receipt of this dispatch by telegraph and mail.

THOS. A. HE-DRICKS,
Commissioner.

67 By telegraph.

GENERAL LAND OFFICE, *May* 31*st*, 1856.

Reg'r & rec'r, New Orleans, Louisiana, W. T. S. by tel.:

You will suspend from sale or location until further orders the following lands all in townships between range- 2 & 12 east lying east of the Mississippi river also the following west of the Mississippi river townships 13 to 19 inclusive west of range 14 tps. 13 to 18 inclusive between range- 13 & 17 tps. 12 to 18 inclusive between range- 16 and 20 tps. 12 to 17 inclusive lying east of range 19

Acknowledge the receipt of this dispatch by telegraph and mail.

THOS. A. HE-DRICKS,
Commissioner.

GENERAL LAND OFFICE, *June* 16*th*, 1856.

Reg'r & rec'd'r, New Orleans, La., W. T. S.

GENTLEMEN: By my telegraphic dispatch of the 31st ult. you were requested to suspend from sale and location until further orders all the lands in your district described as follows:—to-wit:—

All the tps. between range- 2 east and 12 east lying east of the Mississippi river also the following lying west of the Mississippi river.

Tps. 13 to 19 inclusive range- 12 & 13.

Tps. 13 to 18 inclusive situated between ranges 13 & 17.

Tps. 12 to 18 inclusive situated between ranges 16 & 20.

Tps. 12 to 17 inclusive lying east of range 19.

68 The object of the above withdrawal was to protect the lands from sale probably falling within the prescribed limits of

selection for the grant made to the State for certain railroads by a bill which having passed both houses of Congress which having been approved by the President on the 3rd. inst., and published in the Union news paper on the 12th and thus become a law.

I have to request that you will continue the reservation heretofore ordered until otherwise directed.

Acknowledge the receipt of these instructions by mail giving the date of their receipt at your office.

I am very respectfully your ob'd't servant,

THOS. A. HE-RICKS,
Commissioner.

Precisely similar letters addressed to the following offices — further reservations of lands described on page 38.

Reg'r & recorder, Opelousas, La.; reg. & recorder:

All of the lands situated north of the base line and west of the principal meridian tps. 1. north of range- 1 & 2 east.
Tps. 1 to 6 inclusive south of range- 1 & 2 west.
Tps. 1 to 4 south inclusive of range- 3, 4, & 5 west.
Tps. 1 to 2 south inclusive of range- 6 & 7 west.
Tps. 1 to 8 south of range- 1 & 2 east inclusive.
Tps. 2 to 11 south inclusive of range 3 east.
Tps. 2 to 13 south inclusive of range 4 east.
Tps. 4 to 14 south inclusive of range 5 east.
Tps. 1 to 15 south inclusive of range 6 east.
Together with all of the townships lying east of range 6 east and south of township 5 south.

69 Reg. & rec. Greensburg, La.:

All the lands situated between range- 2 east and 10 east.
Restored see notice 583 dated July 27, 1857.

Reg. & rec. Natchitoches, La.:

All the lands south of tap. 21 except as follows tps. 7 to 13 inclusive of range 4.

GENERAL LAND OFFICE, *June 16th*, 1856.

His Excellency Paul O. Herbert, governor of Louisiana, Baton Rouge.

SIR: I have the honor to enclose herewith a printed copy of public act No. 25 making a grant of land to the State of Louisiana in alternate sections to the construction of certain railroads in said State approved the 3rd day of June, 1856.

After the bill had passed both houses of Congress and a copy thereof was filed in this office by the Honl. John H. Sandidge of your State, telegraphic dispatches were sent on the 31st ulto., to the several land offices in the State withdrawing all the lands from the sale and locations until further orders which would probably fall

within the prescribed limits of selection according to the best information of the routes of the road that could be furnished by Sandridge, being all the townships embraced in the blue lines on the enclosed diagram of the State marked A. and the bill having been approved by the President on the 3rd inst., and published in the Union newspaper of the 12th and thus become a law.

70 The instructions have this day been reported by mail to the land office continuing the reservation of the lands withdrawn until otherwise directed.

It will be perceived that the grants are made direct to the State, it will therefore be necessary in the adjustment of them that we have the co-operation of selecting agents duly appointed by the authorities of the State.

The first thing to be done is to transmit separate connected maps of the several roads certified under seal of the State to this office and to the proper land-offices—as these maps will form the basis of the adjustments they should show the connection on a convenient scale of say, one inch to the mile, with lines of public surveys and it will be sufficient if only one section on each side of the road be shown on the receipt of these maps of final location of the routes of each road will be immediately laid down upon the township plats as also the six and fifteen mile limits and the lists prepared without delay of the vacant and sold lands within six miles and such lands which shall be found not to fall within the prescribed limits of fifteen miles or rarely can at once be relieved from suspension and restored to market.

As the title of the State vests in the alternate sections granted within six miles of the roads from the dates of filing the maps of final location, respectively at the local land office and also that of the right of way granted by the general law of the 4th of August 1852 from the date of filing the same at the office, the importance of an early compliance with the foregoing suggestion or requisitions as well as accuracy in showing the tracts actually cut will be seen and appreciated.

71 I am very respectfully, your ob'd't servant,

THOS. A. HENDRICKS,

Commissioner.

GENERAL LAND OFFICE, *June 19th*, 1856.

GENTLEMEN: Instructions having been sent you from this office by telegraph on the 31st ulto. and subsequently by mail on the 16th inst., in reference to the withdrawal from market of certain lands in your district in pursuance to an act of Congress approved on the 3rd inst. granting public lands to the State — Louisiana to aid in the construction of rail roads in said State, you are advised that settlements are authorized upon any of the public lands thus withdrawn and rights of pre-emption may be acquired as well to sections which may be odd numbered and within the six mile limit of the line of rail road as to other lands so reserved.

By the first section of the act referred to, the United States can dispose of by pre-emption any of the lands thus withdrawn up to the times when the lines or routes of said roads are definitely fixed then and not until then will the right of the State attach under said act to all vacant lands in odd numbered sections within the six mile limits.

Acknowledge the receipt of this,

I am very respectfully, your ob'd't servent,

THOS. A. HENDRICKS,
Commissioner.

72 Reg. & rec. New Orleans, Louisiana, N. P. C.:

A similar letter of this date sent to the following offices in Louisiana, Natchitoches, Monroe, Opelousas, Greensburg.

GENERAL LAND OFFICE, *October* 22, 1856.

Reg. — recv. Monroe, Louisiana.

GENTLEMEN: Upon filing in your office of the duly certified map of the line or route as definitely fixed of any of the roads referred to in the act entitled An act making a grant of land to the State of Louisiana to aid in the construction of rail roads in said State approved 3rd June, 1856, you will without awaiting further instructions from this office cease to permit location or entries by pre-emption or for any purpose whatever of the land within fifteen miles of said route and will without delay transmit to this office a carefully prepared list of all the sections and parts of sections with the township and range in your district cut by such route of said road and have the line thereof accurately laid down upon the official township plats of survey in your office. You will likewise advise this office of the precise date of filing the map of location of such road or roads respectively and by whom filed.

You will please acknowledge the receipt of this.

Very respectfully, your ob'd't servant,

THOS. A. HENDRICKS,
Commissioner.

GENERAL LAND OFFICE, *October* 22, 1856.

Register & receiver, Natchitoches, Louisiana:

73 Upon the filing in your office of the duly certified map of the line of route as definitely fixed of any of the roads referred to in this act entitled An act making a grant of lands to the State of Louisiana to aid in the construction of rail roads in said State, approved 3rd June, 1856, you will without awaiting further instructions from this office cease to permit locations or entries by pre-emption or for any purpose whatever of the lands within fifteen miles of said route, and will without delay transmit to this office a carefully prepared list of all the sections and parts of sections with

the township and range in your district cut by such route of said road and have the line thereof accurately laid down on the official township plats of survey in your office.

You will likewise advise this office of the exact date of filing the map of location of such road or roads respectively and by whom filed.

You will please acknowledge the receipt of this.

Very respectfully, your ob'd't servant,

THOS. A. HENDRICKS,
Commissioner.

GENERAL LAND OFFICE, *October* 22, 1856.

Register & receiver, Opelousas, Louisiana.

GENTLEMEN: Upon the filing in your office of the duly certified map of the line or route as definitely fixed of any of the roads referred to in the act entitled "An act making a grant of lands to the State of Louisiana to aid in the construction of rail roads in said State approved June 3rd, 1856, you will without awaiting further instructions from this office, cease to permit locations or en-
74 tries by pre-emption or for any purpose whatever of the lands within fifteen miles of said route and will without delay transmit to this office a carefully prepared list of all sections and parts of sections within the township and range in your district cut by such route of said road and have the line thereof accurately laid down upon the official township plats of survey in your office. You will likewise advise this office of the precise date of filing the map of location of such road or roads respectively and by whom filed.

You will please acknowledge the receipt of this.

Yours respectfully, your ob'd't servant,

THOS. A. HENDRICKS,
Commissioner.

GENERAL LAND OFFICE, *October* 22, 1856.

Reg. & rec. New Orleans, La.

GENTLEMEN: Upon the filing in your office of the duly certified map of the line of route as definitely fixed of any of the roads referred to in the act entitled An act making a grant of lands to the State of Louisiana to aid in the construction of rail roads in said State, approved 3rd June, 1856, and the 6th section of an act entitled "An act granting public lands in alternate sections to the State of Mississippi to aid in the construction of railroads in said State and for other purposes, approved 11th August, 1856. You will without awaiting further instructions from this office cease to permit locations or entries by pre-emption or for any purpose whatever of the land within fifteen miles of said route and will without
75 delay transmit to this office a carefully prepared list of all the sections and parts of sections with the township and range in

your district cut by such route of said road and have the line thereof accurately laid down upon the official township plats of survey in your office. You will likewise advise this office of the precise date of filing the map of location of such road or roads respectively and by whom filed.

Very respectfully, your ob'd't servant,

THOS. A. HENDRICKS,
Commissioner.

GENERAL LAND OFFICE, *October* 22, 1856.

Reg. & rec. Greensburg, La.

GENTLEMEN: Upon the filing in your office of the duly certified map of the line of routes as definitely fixed of any of the roads referred to in the act entitled "An act making a grant of lands to the State of Louisiana to aid in the construction of rail roads in said State, approved 3rd June, 1856 and the 6th section of an act entitled An act granting public lands in alternate sections to the State of Mississippi to aid in the construction of rail roads in said State and for other purposes approved 11th of August, 1856, you will without awaiting further instructions from this office, cease to permit locations or entries by preëmption or for any purpose whatever of the lands within fifteen miles of said route and without delay and transmit to this office a carefully prepared list of all sections and parts of sections with the township and range in your district cut by such route of said road and have the line thereof accurately laid down upon the official township plats of survey in your office. You
76 will likewise advise this office of the precise date of filing the map of location of such road or roads respectively and by whom filed.

You will please acknowledge the receipt of this.

Very respectfully, your ob'd't servant,

THOS. A. HENDRICKS,
Commissioner.

GENERAL LAND OFFICE, *May 12th*, 1853.

Register and receiver of the land office Natchitoches, La., and register and receiver of the land office Monroe, La., 2 letters.

GENTLEMEN: For your guidance in disposing of the public lands I enclose herewith a diagram of the district of lands subject to sale at your office upon which has been traced the line of route and the lines of the six and fifteen miles limits of the rail roads within said district to aid in the construction of which a grant of land was made to the State of Louisiana by the act of Congress approved 3 June, 1856.

As all the vacant tracts in the odd numbered sections outside of six and within fifteen miles limits have been selected by the agent

of the State in lien of the lands sold and preëmpted in the alternate sections granted by the act above mentioned, such tracts are not restored to market by notice No. 599 and you will of course continue to reserve them from sale of location for any purpose whatever.

Respt. your ob'd't servant,

THOS. A. HENDRICKS,
Commissioner.

77

[Mutilated.]

Filed
in 5231
, 1903.
vy, d'y clerk.

DEPARTMENT OF THE INTERIOR.
GENERAL LAND OFFICE.
WASHINGTON, D. C., *December 8th*, 1888.

I, S. M. Stockslager, Commissioner of the General Land Office do hereby certify that the annexed copy of the certificate of the governor of Louisiana dated July 14th, 1884 and relating to the construction of thirty-six miles of road by the Vicksburg, Shreveport and Pacific Railroad Company is a true and literal exemplification from the original on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed at the city of Washington on the day and year above written.

S. M. STOCKSLAGER,
Commissioner of General Land Office.

Governor's Certificate.

"H"

EXECUTIVE OFFICE,
STATE OF LOUISIANA, BATON ROUGE.

I, Samuel Douglas McEnery, governor of the State of Louisiana, do hereby certify that thirty-six continuous miles of the Vicksburg, Shreveport and Pacific railroad commencing at a point
78 sixty miles west of Monroe on the Ou-chita river and running thence to the city of Shreveport on Red river, being the fourth section of twenty miles and the fractional fifth section, sixteen miles west of Monroe, has been constructed, completed and equipped as required by the act of Congress, approved June 3rd, A. D. 1856 and the act of the Legislative Assembly of the State of Louisiana, approved March 11", 1857, entitled "An act to accept in part of the grant and carry into execution the trust

conferred upon the State of Louisiana by an act of Congress making a grant of lands to aid in the construction of railroads in said State approved June 3rd, 1856" granting lands to said railroad. Thus closing the gap between Monroe and Shreveport and completing the whole line of road as chartered between the Mississippi river and the State line of Texas.

In testimony whereof I have hereunto set my hand and caused to be affixed the great seal of the State.

S. D. McENERY, *Governor.*

Done at Baton Rouge this the eighteenth day of July, 1884.

Attest:

[SEAL.] JOHNARW DONEUR,
Ass't Secretary of State.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *May* 6, 1891.

I, Thomas H. Carter, Commissioner of the General Land Office, do hereby certify that the annexed copies of certificates by Gov-
79 ernors Henry C. Warmoth and Samuel D. M'Enery of Louisiana dated September 20, 1872, Novembe , 1883, January 15, 1884. March 4, 1884 and July 18, 1884, and certifying to the construction of the different sections of railroad now known as the Vicksburg, Shreveport and Pacific railroad are true and literal exemplifications from the originals on file in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed at the city of Washington on the day and year above written.

THOMAS H. CARTER,
Commissioner of General Land Office.

STATE OF LOUISIANA, }
Executive Department. }

NEW ORLEANS, *September 20th*, 1872.

To the honorable Secretary of the Interior, Washington, D. C.:

I, Henry C. Warmouth, governor of the State of Louisiana, do hereby certify that ninety-four miles of "a railroad from the Texas line in the State of Louisiana west of the town of Greenwood, Shreveport and Monroe to a point on the Mississippi river opposite Vicksburg" has been completed within the ten years stipulated in the grant to-wit:—twenty miles from the Texas State line to Red river at Shreveport, and seventy-four miles from the Ouchita river at Monroe to the Mississippi river opposite Vicksburg and that the North Louisiana and Texas Railroad Company, the successors of the Vicksburg, Shreveport and Texas Railroad Company are entitled to the lands contiguous to said completed sections of said rail-

road according to the fourth section of an act of Congress
80 entitled "An act to grant lands to the State of Louisiana to aid in the construction of railroads in the State. "Approved June 3rd, 1856"

H. C. WARMOUTH,
Governor of Louisiana.

[SEAL.] Y. A. WOODWARD,
Ass't Secretary of State.

EXECUTIVE OFFICE,
STATE OF LOUISIANA, BATON ROUGE.

I, Samuel Douglas McEnery, governor of the State of Louisiana, do hereby certify that twenty continuous miles of the Vicksburg, Shreveport and Pacific Railroad Company commencing at Monroe and running thence to a point twenty mile- west of Monroe in the direction of Shreveport in said State has been constructed, completed and equipped as required by the act of Congress, approved June 3rd, 1856 and that act of the Legislative Assembly of the State of Louisiana, approved March 11th, 1857, entitled "An act to accept in part of the grant and carry into execution the trust conferred upon the State of Louisiana by an act of Congress making a grant of lands to aid in the construction of railroads in said State, approved June 3rd, 1856 granting lands to said railroad."

In testimony whereof, I have hereunto set my hand and caused to be affixed the great seal of the State.

S. D. McENERY, *Governor.*

Done at Baton Rouge this 6 day of November, 1883.

81 Attest: WILL A. STRONG,
[SEAL.] *Secretary of State.*

EXECUTIVE OFFICE,
STATE OF LOUISIANA, BATON ROUGE.

I, Samuel Douglas McEnery, governor of the State of Louisiana, do hereby certify that twenty continuous miles of the Vicksburg, Shreveport and Pacific railroad commencing at a point (20) twenty miles west of Monroe (on the Ouchita river) and running thence to a point (40) forty miles west of Monroe, being the second section of twenty miles west of Monroe and running thence to a point (40) miles west of Monroe in the direction of Shreveport in said State has been duly constructed, completed and equipped as required by the act of Congress, approved June 3rd, 1856, and the act of the Legislative Assembly of the State of Louisiana, approved March 11th, 1857, entitled an act to accept in part of the grant and carry into execution the trust conferred upon the State of Louisiana by an act of Congress making a grant of land to aid in the construction of railroads in said State approved June 3rd, 1856, granting lands to said railroad

In testimony whereof I have hereunto set my hand and caused to be affixed the great seal of the State.

S. D. McENERY, *Governor.*

Done at Baton Rouge this 15 day of January, 1884, and duly recorded in Book 2 of Proclamations page 575 and following.

82 Attest, with the seal of the State of Louisiana hereunto attached.

[SEAL.]

OSCAR ARROYS,
Ass't Secretary of State.

EXECUTIVE OFFICE,
STATE OF LOUISIANA,
BATON ROUGE,

I Samuel Douglas McEnery, governor of the State of Louisiana, do hereby certify that twenty consecutive miles of the Vicksburg, Shreveport and Pacific railroad commencing at a point forty miles west of Monroe (on the Ouchita river) and running thence to a point sixty miles west of Monroe, being the third section of twenty miles west of Monroe in the direction of Shreveport in said State has been constructed completed and equipped as required by the act of Congress approved June 3rd, 1856 and the act of the Legislative Assembly of the State of Louisiana, approved March 11th, 1857, entitled "An act to accept in part of the grant and carry into execution the trust conferred upon the State of Louisiana by an act of Congress making a grant of lands to aid in the construction of railroads in said State approved June 3rd, 1856" granting lands to said railroad.

In testimony whereof, I have hereunto set my hand and caused to be affixed the great seal of the State.

S. D. McENERY, *Governor.*

Done at Baton Rouge this 14th day of March, A. D. 1884.
Attest with seal of the State of Louisiana.

[SEAL.]

OSCAR ARROYS,
Ass't Secretary of State.

83 STATE OF LOUISIANA,
Office of the Secretary of State.

I, the undersigned secretary of state of the State of Louisiana do hereby certify that the above and foregoing has been this day *been* duly recorded in Book 2 of Proclamations, Orders & etc. under pages 597, 598 & 599.

Witness my signature and the seal of the State of Louisiana at the city of Baton Rouge, this fourteenth day of March, A. D. 1884.

[SEAL.]

OSCAR ARROYS,
Ass't Sect. of State.

EXECUTIVE OFFICE,
STATE OF LOUISIANA, BATON ROUGE.

I, Samuel Douglas McEnery, governor of the State of Louisiana, do hereby certify that thirty-six continuous miles of the Vicksburg, Shrevepoart and Pacific railroad commencing at a point sixty miles west of Monroe on the Ouchita river and running thence to the city of Shreveport on Red river, being the fourth section of twenty miles and the fractional fifth section, sixteen miles west of Monroe, has been constructed, completed and equipped as required by the act of Congress, approved June 3rd, A. D. 1856 and the act of the Legislative Assembly of the State of Louisiana approved March 11th, 1857 entitled "An act to accept in part of the grant and carry into execution the trust conferred upon the State of Louisiana by an act of Congress, making a grant of lands to aid in the construction of railroads in said State, approved June 3rd, 1856, granting lands to said railroad. Thus closing the gap between Monroe and Shreveport, completing the whole line of road as chartered between the Mississippi river and the State line of Texas.

84 In testimony whereof I have hereunto set my hand and caused to be affixed the great seal of the State.

S. D. McENERY, *Governor.*

Done at Baton Rogue this the eighteenth day of July, 1884.

Attest:

JOHN A. McDONALD,
[SEAL.] *Ass't Secretary of State.*

(Endorsed:) Filed in evidence in 5231, February 23, 1903. J. H. Levy, d'y clerk.

In the Circuit Court of the United States for the District of Louisiana.

HENRY R. JACKSON ET ALS.
vs.
VICKSBURG, SHREVEPORT AND TEXAS RAILROAD CO., North Louisiana and Texas Railroad Co., and Others, Defendants. } No: 5033.

Whereas, the Vicksburg, Shreveport and Texas Railroad Company, a corporation of the State of Louisiana, incorporated by an act approved the 28th day of April, 1853 and promulgated as act No. 228 of the session of the legislature of that year and in other acts of the General Assembly supplementary thereto and in furtherance of the object of the same, under the power and authority granted to the said company did execute a mortgage bearing date the first day of September, 1857 to secure the payment of a uniform series of two

thousand first mortgage bonds, payable to John Ray or
85 bearer, each bearing even date with the mortgage and payable twenty years from date with coupons for semi-annual interest, each being for the sum of forty dollars or nine pounds sterling, and each bond for one thousand dollars or two hundred and twenty-five pounds sterling.

And the said corporation by the said mortgage did impose upon the property therein a first mortgage lien in favor of the holders of the said bonds and each of them for the payment of the principal and the interest of the said bonds, which property consists of the entire railroad of the said company extending from a point opposite to the city of Vicksburg on the Mississippi river to the boundary line of the State of Louisiana and Texas, a distance of one hundred and ninety miles more or less by way of Monroe and Shreveport then finished or to be completed.

And all the rights of way, lands, property, franchises, right and appurtenances, water stations, ware houses, depots, depot grounds, buildings, structures and improvements which have been or may be constructed thereon; and all the engines, locomotives, wagons, machinery utensils and effects generally of every description or which may be placed upon or become attached to the same without exception or reservation.

And under the head of lands, all the lands to be acquired by the company for any purpose or right of way, depots, depot grounds, or for sale for profit as town lots or otherwise.

And specially it was intended to include the lands together with all the rights of the company thereto, being some four hundred and twenty thousand, nine hundred and twenty-four acres more or less, donated by the Congress of the United States to the State of Louisiana by act approved the third day of June, 1856 and granted to this company to aid in the construction of the railroad aforesaid
86 by acts of the General Assembly approved June third, 1856 and eleventh March, 1857, which lands lie along the line of the railroad and contiguous thereto and within fifteen miles from the railroad.

And whereas, the said Vicksburg, Shreveport and Texas Railroad Company did put in circulation to *bona fide* purchasers seven hundred and sixty-one of the series of bonds aforesaid and did after the issue thereof during the years 1864 and from then till December A. D. 1866 fail to pay the interest thereon to the holders of the said bonds the suit of the title mentioned in the caption of this deed was commenced and has been prosecuted against the said Vicksburg, Shreveport and Texas Railroad Company, the North Louisiana and Texas Railroad Company, John T. Ludeling, John Ray, Frances P. Stubbs, Wesley I. Q. Baker, Henry M. Bry, Joseph F. McGuire, John A. McGuire, Robert Ray, Joseph P. Crossley, Chas. W. Phillips, Robert C. Strother, Christopher H. Dabbs, George C. Waddell and William M. Pinkard as defendants.

And such proceedings were had in the said cause in the circuit

court of the United States that a decree was rendered therein on the third day of July A. D. 1879 now of record in said cause wherein and whereby the validity of the mortgage aforesaid was fully established against each and all of the parties aforesaid and its obligation recognized as paramount to any claims, right or estate therein, held by any of the said parties except as hereafter excepted in this deed, and that the said property specified therein with all of the additions, ameliorations, improvements, constructions and works made by the defendants thereon during their occupancy of the same should be exposed to sale for the purpose of paying the debt due to the holders of the bonds issued *bona fide* and held by the plaintiffs in the said cause. And the said decree did declare that the property
87 aforesaid should be subject to a claim of the North Louisiana and Texas Railroad Company for the sum of two hundred and ninety-four thousand, six hundred and six 08/100 dollars with five per cent. interest thereon from the 13th day of April A. D. 1875 until payment was made as defined in the decree aforesaid and is particularly described therein.

And that this sale should be made, the said court appointed Frances A. Woolfley as a special master to superintend the said sale and to make the same under the direction of the said decree of the circuit court of the United States in the cause aforesaid. Know all men by these presents that I, Frances A. Woolfley, master as aforesaid under the direction of the said decree did cause all of the property of whatever kind included in the said mortgage of the said Vicksburg, Shreveport and Texas Railroad Company, real or personal and the railroad of the said company commencing on the Mississippi river opposite to Vicksburg and extending to the Texas line by way of Monroe and Shreveport with all of the rights, privileges, franchises and immunities granted to the said company in any acts of the General Assembly; and all the additions, ameliorations, improvements, constructions and works thereon made by any of the defendants during their occupation of the same with the rights of way, depots, dopot grounds, water stations, buildings, locomotives, engines, machinery fixtures and whatever else is in use upon said railroad or attached thereto or that appertains to the same without reservation and exception; and all the lands of whatever description owned by the said corporation or which have been acquired by the same for the said company, including the lands donated by the State of Louisiana in the acts of the General Assembly in 1856 and 1857 as specified in the mortgage to be advertised for sale on the first day of December, 1879, between the hours of 12 o'clock m. and 3 o'clock p. m., say 1 o'clock p. m. in bulk for
88 cash to the highest bidder, publishing notices in three news papers for six consecutive weeks before the day of the sale, three times each week, one paper published at New Orleans, to-wit:—

The New Orleans Times, one paper published in the city of Atlanta, Georgia, to-wit:—the Atlanta Daily Post and one published

in the city of New York to-wit:—the New York Commercial Advertiser, and on the first day of December, 1879 at the time and place stated in the notices and in the manner required by the said decree, I did sell the same at public auction to the last and highest bidder for the said property, viz:—

Henry R. Jackson, Lemerel P. Grant, William M. Wadley, Edward Hooper and H. B. Plant and the survivors and survivor of them, they being a committee appointed by a majority of the bond holders with authority to make the purchase for them, and for those who should be associated with them under the terms of the decree of the said court directing the sale of the property aforesaid for the sum of sixty thousand dollars, which was paid to me by the said committee in lawful money of the United States on the spot.

Whereas, in consideration of the premises and the payment of the sum of money aforesaid by the said committee and the confirmatory order of the said court authorizing the delivery of the property to the purchasers and the execution of a deed to them I, the said Frances A. Woolfley, special master as aforesaid, do hereby grant, bargain, sell and convey to the said Henry P. Jackson, Lemerel P. Grant, William M. Wadley, Edward Hooper and H. B. Plant and to the survivors and the survivor of them in full property and dominion, the railroad of the Vicksburg, Shreveport and Texas Railroad Company, as constructed or to be constructed under the
89 charter and plans of survey of location with all of the additions, ameliorations, improvements, constructions and works of the defendants or any of them to the same or in connection therewith with all of the rights, privileges, franchises, immunities granted to the said corporation in respect to the same.

And all the lands acquired by grant or donation from the United States or the State of Louisiana under the acts before mentioned and specified in the mortgage and of the real and personal property and effects comprehended in the terms of the mortgage or used in any connection with the said railroad.

To have and to hold the same in full property and dominion freed and discharged from the right, title, claim, estate and demand of the said Vicksburg, Shreveport and Texas Railroad Company and of the defendants every one of them, except that the lien and mortgage of the North Louisiana and Texas Railroad Company for the sum of two hundred and ninety-four thousand, six hundred and six & 08/100 dollars with interest at the rate of five per cent. per annum from the 13th April, 1875, established by the decree of this court bearing date the third day of July, 1879 and the remedies to enforce the same therein contained are reserved without diminution,

And the said Henry R. Jackson, Lemerel P. Grant, William M. Wadley, Edward Hooper and H. B. Plant accept this deed for the uses and purposes therein mentioned for themselves and the parties interested.

As witness my hand, the master aforesaid, and our hands, the committee aforesaid, this 20th day of December, A. D. 1879.

F. A. WOOLFLEY,
Special Master.
HENRY R. JACKSON,
LEMEREL P. GRANT,
WILLIAM M. WADLEY,
90 EDWARD HOOPER,
H. B. PLANT, *Committee,*
By JOHN A. CAMPBELL,
Solicitor and Attorney for the said Parties.

Authority filed in court.

Executed in the presence of
T. V. COUPLAND.
R. B. HOLLY.

STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans.

By this instrument of declaration: Be it known that on this the twentieth day of December in the year one thousand eight hundred and seventy-nine before me, John David Crawford, a notary public in and for the parish of Orleans, State of Louisiana, duly commissioned and sworn, personally came and appeared, John A. Campbell and Frances A. Woolfley of the city of New Orleans, the parties to the foregoing deed who are well known to me as such and who signed and executed the same in my presence and that of the subscribing witnesses and declared that they signed and executed the annexed instrument for the uses and purposes therein set forth.

In testimony whereof, I hereunto set my hand and seal of office.

J. D. CRAWFORD,
Notary Public.

91 Filed December 24th, 1879.

I, the undersigned recorder in and for the parish of Ouachita, State of Louisiana, hereby certify that said act of sale was duly inscribed in the Record of Conveyance Book "X," pages 433, 434, 435, 436, 437 & 438.

Witness my hand and seal of office this day and date above filed.

R. W. McCLENDON, JR.,
Deputy Recorder for Ouachita Parish, Louisiana.

STATE OF LOUISIANA, }
Parish of Madison. }

RECORDER'S OFFICE.

Filed Dec. 29th, 1879, for record.

I, Robert Barnes, recorder in and for said parish and State do hereby certify that the foregoing act of sale together with all documents attached has been duly recorded in Notarial Record Book "I," pages 30, 31, 32 & 33.

In testimony whereof I hereunto sign my name and affix the seal of my office this 31st day of December, A. D. 1879.

ROBERT BARNES,
Recorder Madison Parish, La.

Filed for record Jan'y 5th, 1880.

M. E. MASSEE,
Recorder East Carroll Parish, La.

STATE OF LOUISIANA, }
Parish of East Carroll. }

92 I, Benjamin H. Lamir, deputy recorder in and for said parish and State duly appointed and qualified do hereby certify that the foregoing act of sale together with all documents attached thereto has been duly recorded in this office in Notarial Record Book "Q," folios 111, 112, 113 and 114.

In testimony whereof, I have hereunto signed my name and affixed the seal of this office on this the — day of Jan'y, A. D. 1880.

B. H. LAMIR,
D'y Recorder.

Filed January 8th, 1880, for record.

W. A. HEDRICK, *Recorder.*

STATE OF LOUISIANA, }
Parish of West Carroll. }

RECORDER'S OFFICE.

I, W. A. Hedrick, recorder in and for said parish and State do hereby certify that the above and foregoing act of sale together with all documents attached has been duly recorded in Notarial Book "A" pages 158, 159, 160, 161.

In testimony whereof, I hereunto sign my name and affix my seal of office this 8th day of January A. D. 1880.

W. A. HEDRICK,
Recorder West Carroll Parish.

Filed for record, January 9th, 1880.

JOHN C. T. CORKEN,
Recorder, Parish of Franklin.

STATE OF LOUISIANA, }
Parish of Franklin. }

93 I, Jno. C. T. Corken, recorder of the parish and State aforesaid, do hereby certify that the above and foregoing deed together with all documents attached, also recorder's certificates have this day been duly recorded in my Notarial Book "H" folios 714, 715, 716, 717, 718 and 719.

Witness my official signature and seal on this 9th day of January A. D. 1880.

JNO. C. T. CORKEN,
Recorder Parish of Franklin.

Filed for record, January 12th, 1880.

WILEY P. MANGHAM,
Recorder Richland Parish.

STATE OF LOUISIANA, }
Parish of Richland. }

RECORDER'S OFFICE.

I, Wiley P. Mangham, recorder of the parish of Richland and State aforesaid do hereby certify that the above and foregoing deed together with all documents thereto attached, also recorders' certificates, has this day been duly recorded in my office in Notarial Book "G" pages 316, 317, 318, 319, 320, 321, 322 and 323.

Witness my official signature and seal of office this January 12th, A. D. 1880.

WILEY P. MANGHAM,
Recorder of Richland Ph.

Filed for record, Jan'y 13th, 1880.

H. H. NAFF,
Recorder Morehouse Parish.

STATE OF LOUISIANA, }
Parish of Morehouse. }

94 I, Henry H. Naff, recorder of Morehouse parish do hereby certify that the foregoing deed and certificate of acknowledgment thereto attached and the six foregoing certificates of record were this day duly recorded in my office in Notarial Book "L" pages 545, 546, 547, 548, 549, 550 and 551.

Witness my hand and seal of office this 13th January, A. D. 1880

H. H. NAFF,
Recorder Morehouse Ph.

Filed for record January 15th, 1880.

JAS. M. SMITH,
Deputy Recorder, Union Parish, Louisiana.

STATE OF LOUISIANA, }
Parish of Union. }

RECORDER'S OFFICE.

I, James M. Smith, d'y recorder of Union parish, do hereby certify that the foregoing deed and certificate of acknowledgment there to attached and the seven foregoing certificates of record were this day duly recorded in my office in Notarial Book "R" pages 346, 347, 348, 349, 350, 351, 352 and 353.

Witness my official signature and seal of office this January 15th, A. D. 1880.

JAS. M. SMITH,
D'y Recorder for Union Parish, Louisiana.

Filed for record, January 16th, 1880.

H. S. LIGGINS, *Recorder.*

STATE OF LOUISIANA, }
Parish of Lincoln. }

RECORDER'S OFFICE.

95 I, H. S. Liggins, recorder in and for the parish of Lincoln and State aforesaid, do hereby certify that the foregoing deed and certificate of acknowledgment thereto attached and the eight foregoing certificates of record were this day duly recorded in my office in Notarial Book "B" pages 95, 96, 97, 98, 99, 100, 101 and 102.

Witness my official signature and seal of office this January 16th, A. D. 1880.

H. S. LIGGINS,
Recorder Parish of Lincoln, Louisiana.

Filed for record, this January 17th, 1880.

G. W. EDMONDSON, *Recorder.*

STATE OF LOUISIANA, }
Parish of Jackson. }

RECORDER'S OFFICE.

I, G. W. Edmondson, recorder in and for the parish and State aforesaid, do hereby certify that the foregoing deed, acknowledgement and the nine certificates of record have this day been duly recorded in Notarial Record Book "A" pages 49, 50, 51, 52, 53, 54 & 55.

Witness my hand and official signature this 17th day of January A. D. 1880.

G. W. EDMONDSON, *Recorder.*

Filed for record, January 19th, 1880.

JNO. M. HEAD, *Recorder.*

96 STATE OF LOUISIANA, }
Parish of Bienville. }

RECORDER'S OFFICE.

I, Jno. M. Head, recorder in and for the parish of Bienville, State aforesaid, do hereby certify that the foregoing deed certificate of acknowledgment and the ten certificates of record have this day been duly inscribed in my office in Notarial Book "L" folios 139, 140, 141, 142, 143, 144, 145, 146, 147, 148 & 149.

Witness my official signature and seal of office this January 19th, A. D. 1880.

JNO. M. HEAD,
Recorder Parish Bienville, Louisiana.

Filed for record, January 19th, 1880.

J. R. RAMSEY,
Recorder Parish of Claiborne, La.

STATE OF LOUISIANA, }
Parish of Claiborne. }

I, J. R. Ramsey, recorder in and for the parish and State aforesaid, hereby certify that the within and foregoing deed and certificate of acknowledgment together with the eleven certificates of record have been duly recorded in my office in Conveyance Book "L" pages 716, 717, 718, 719 & 720.

Given under my hand and seal of office this January 19th, 1880.

J. R. RAMSEY,
Recorder Parish of Claiborne, La.

97 Filed for record, January 20th, 1880.

GEO. McWEAVER,
Recorder Webster Parish, La.

STATE OF LOUISIANA, }
Parish of Webster. }

RECORDER'S OFFICE.

I, do hereby certify that the within and foregoing deed and certificate of acknowledgment and the twelve certificates of record has this day been duly recorded in my office in Book 3 of Conveyances, folios 193, 194, 195, 196, 197, 198, 199 & 200.

Witness my hand and seal of office at Minden, La., this 20th day of January A. D., 1880.

GEO. McWEAVER,
Recorder Webster Parish, Louisiana.

STATE OF LOUISIANA, }
Parish of Bossier. }

Filed and recorded in vol. 11 of Conveyances pages 355 to 364 inclusive.

Witness my hand and seal of office at Bellvue, Louisiana, this 21st day of January A. D. 1880.

J. H. KEYSER,
Deputy Recorder.

STATE OF LOUISIANA, }
De Soto Parish, Recorder's Office. }

I hereby certify the foregoing deed acknowledgment and certificates of record have on this day been duly recorded in this office in Book of Conveyances "T" pages 357 to pages 363 inclusive.

Witness my signature and seal of office at Mansfield, La., on
98 this, the 23rd day of January, A. D. 1880.

D. W. HESCOTT,
Recorder De Soto Parish, La.

RECORDER'S OFFICE, CADDO PARISH, LA.

I hereby certify that I have this day filed and recorded the above and foregoing instrument of writing in my office, in Book of Conveyances "G" pages 43 to 50 inclusive.

Given under my hand and seal at Shreveport, La., this 24th day of January, A. D. 1880.

E. W. DURRANT,
Recorder Caddo Parish, La.

(Endorsed:) Filed in evidence, in 5231, February 23, 1903. J. H. Levy, d'y clerk.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *Feb'y* 4, 1899.

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed copy of departmental decision dated March 20, 1872 in the case of John W. Carlin *vs.* Vicksburg, Shreveport and Texas Railroad Company involving lots 1, 2, 3, 4, 5,
6, 7, 8 and 9 sec. 31 T. 18 N. R. 13 W. Natchitoches district,
99 Louisiana is a true and literal exemplication of the original on file in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed at the city of Washington on the day and year above written.

BINGER HERMANN,
Commissioner of the General Land Office.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., *March 20th*, 1872.

SIR: I have examined the questions presented by the appeal of John W. Carlin from your decision of Nov. 29th, 1871, rejecting his application to enter as a homestead lots 1, 2, 3, 4, 5, 6, 7, 8, and 9 containing 164 4/10 acres of sec. 31 T. 18 R. 13 Natchitoches, La., on August 21, 1871. Carlin applied at the local office to enter said tract as a homestead, under acts of May 20, 1862 and July 15, 1870.

His application was refused because the tracts sought to be entered were included in the grant to the Vicksburg, Shreveport and Texas railroad made by the act of June 3rd, 1856 (11 Stats. p. 18). On the 19th day of November, 1871, you sustained the decision of the local office in these words "Our records show that said lands were approved to the State by the Secretary of the Interior, October 7, 1859, for the benefit of said road under act of June 3rd, 1856 and until the grant shall be formerly declared forfeited and the land returned to the public domain, the tracts are not subject to entry."

From this decision an appeal has been taken to the department on the ground of error in law.

100 It appears that the line of said road was definitely located March 6, 1857, that section 31 aforesaid was within its general limits as ascertained by such location.

Prior to this date viz: 31 May, 1856, section 31 had — ordered to be withdrawn for the benefit of said Vicksburg, Shreveport and T. R. R. and on the 7th October, 1859 it was approved to the State for the benefit of said road.

The township in which section 31 is situated was originally surveyed in 1839 and by the survey said section extended to the borders of a body of water designated as "Silver lake."

Owing to the presence of this water, it seems to have been impossible or inconvenient at that date to complete the survey of said section 31. The lines were not therefore *not* run at that date, but, as was the custom in such cases were left to be completed by protraction or by actual survey as might be determined on thereafter.

During the spring and summer of 1857, correspondence ensued between your office and the surveyor general, with a view to determine whether section 31 was to be bounded by the waters of Silver lake as found in 1839, or was to include land from which the waters of the said lake had receded, in order to give it the full quantity of a section.

The surveyor general on the 10th of October 1857, following the supposed instructions of your office returned a plat of the lands covered by Silver lake stating further surveys were unnecessary, and by this plat the land in controversy was numbered lots 1, 2, 3, 4, 5, 6, 7, 8 and 9 of said section 31.

In view of the foregoing facts, I am of the opinion that the land

in controversy constitutes part of said section 31, that they were withdrawn from the market on the 31st day of May, aforesaid, and were duly certified and approved to the State of Louisiana for the benefit of said Vicksburg, Shreveport and Texas railroad, under the act of Congress, approved June 3, 1856.

101

Having been thus withdrawn and certified, these lots are not subject to the rights of homestead entry and cannot be until they are restored to the public domain.

I, therefore, affirm your decision and return the papers transmitted with your letter of the first ultimo.

The argument in opposition to the conclusion here announced rests upon the allegation that the land in controversy never was attached to said section 31, that the boundary of said section as made by the survey of 1839 meandered Silver lake and that the character of said lake was such, that the recession of its waters did not permit any adjacent land to attach to sec. 31.

The facts in the case as presented to my mind, do not sustain this argument or its conclusions. It seems to me that the survey of 1839 stopped at the borders of Silver lake because it was then difficult on account of water to complete the lines of said section. I think it was then supposed that the lines would be completed at a future day, by protraction or actual survey, so as to give said section its full quantity. Such a course would have accorded with the general practice in such cases.

In 1857, 18 years after the original survey, the waters of Silver lake seemed to have receded and the surveyor general was of opinion that no further survey was necessary.

He therefore simply perfected the original map of the township embracing said section and included the lands in controversy within its boundaries, making them a part thereof.

102

I think therefore the Government is committed to this view and therefore whoever may own said section will also be the owner of the lots in controversy.

I am informed that the Vicksburg, Shreveport and Texas railroad had forfeited a portion of its land grant, including the lands in controversy by non-compliance with the requirements of its charter. You are respectfully requested to investigate this subject, and if you find such forfeiture has occurred, you will proceed to declare the same and restore the lands thus forfeited to the public domain.

If any effort for the renewal of the said grant is now being made in either branch of Congress, no action should be taken until the matter shall have been finally disposed of.

Very respectfully, C. DELANO, *Secretary.*

Hon. Willis Drummond, Com. G. L. O.

(Endorsed :) Filed in evidence in 5231, Feb'y 23, 1903. J. H. Levy, d'y clerk.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *Feb'y* 4, 1899.

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed copy of departmental decision dated March 18, 1881, in the case of James A. King and Ambroise Martell *vs.* Vicksburg, Shreveport and Texas Railroad Company involving lots 1, 2, 3, 4, 5, 6, 7, 8 and 9 sec. 31, T. 18 N. R.
103 13 W. Natchitoches district, Louisiana, is a true and literal exemplification of the original on file in my office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed at the city of Washington on the day and year above written.

BINGER HERMANN,
[SEAL.] *Commissioner of the General Land Office.*

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *March* 18, 1881.

The Commissioner of the General Land Office.

SIR: I have examined the case of James A. King and Ambroise Martell *vs.* The Vicksburg, Shreveport and Texas Railroad Company involving lots 1, 2, 3, 4, 5, 6, 7, 8 and 9 of section 31 town 18 north range 13 west, Natchitoches district, Louisiana, on appeal from your decision of October 9, 1879, in favor of the company.

The record shows that the greater portion of the township was surveyed in the year 1837, as shown by plat approved February 13, 1837, but said tracts were not represented thereon, section 31, being left blank; that on March 19, 1838, a plat was approved, showing these tracts as being covered by a body of water known as Silver lake, which had been regularly meandered on the 2nd and 3rd of that month, that on October 10th, 1857 (the water of said lake having receded), the surveyor general approved and forwarded
104 to your office a supplemental plat, representing the tracts in question allot-ed as aforesaid, having perfected the original map of said township by protraction.

The record further shows that the said tracts lie within the six mile limit of the grant by act of June 3rd, 1856 (11 Stat-es 18) to the State of Louisiana, to aid in the construction of railroads in said State, that these tracts were approved for the benefit of said railroad October 7, 1859 and re-approved January 10, 1874 that on January 1, 1858, your office approved the action of the register rejecting the application of one William S. Pike to locate internal improvement warrants on said tracts because they were reserved for the railroad grant.

On the 5th and 14th of May, 1858, the Commissioner re-affirmed his decision which my predecessor, Mr. Secretary Thompson affirmed June 17, 1858. September 28, 1872, certain parties to-wit:—F. S.

Legardy and A. Jones made homestead entries of said tract but their entries were cancelled November 20, 1872 because — the conflict with the grant aforesaid.

The case now arises upon the application of the plaintiffs (King and Martell) to make additional homestead entries of the tracts in question, which, they allege were not "land" at the date of said grant nor for years thereafter, being covered by the waters of Silver lake as late as the year 1866; that the plat approved October 10, 1857, was made without actual survey, and cannot therefore be considered as establishing the status of these tracts at the time and on August 2, 1878 they, by their counsel made motion for a hearing and investigation to establish said allegations. In support of said motion it is urged by the counsel:

1. That the certificates of 1859 and 1874 are void under section 2449, Revised Statutes, and

105 2. That the decision of Secretary Thompson is not binding, the same having been in respect to persons not now in interest. In disposing of the case as thus presented it is only necessary to say that the subject matter involved was decided against the appeal of a former claimant upon these identical lands (with exception of lot 3) by my predecessor, Mr. Secretary Delano, March 20, 1872, who held that the lands were originally a part of section 31 and properly certified to the State in 1859 for the benefit of the road (see case of John W. Carlin *vs.* said company decided as above).

The foregoing decisions touching the lands in question as stated, has all the force and effect of *stare decisis*.

Consequently the adjustment of the grant in 1874 in ascertainment of the right of the State under the act of July 14, 1870, (16 Stats. 277) declaring a partial forfeiture, and the re-approval of the lists containing these particular lands as a part of said grant earned by the company must be considered as a final adjustment and disposition of the subject matter which exhausted the power and jurisdiction of the department.

Your decision is therefore affirmed, and the papers submitted with your letter of April 6, 1880 are herewith returned.

Very respectfully, S. J. KIRKWOOD, *Secretary*.

2/-760 -80.

(Endorsed:) Filed in evidence in 5231, Feb'y 23, 1903. J. H. Levy, d'y clerk.

106 UNITED STATES OF AMERICA,
State of Louisiana.

Supreme Court of the State of Louisiana.

TUESDAY, *August* 14*th.*

On Tuesday the 14th day of August A. D. 1866 the court met at 9 o'clock a. m. pursuant to adjournment.

Present: Honorable W. B. Hyman, chief justice; Z. Labauve, associate justice; James G. Taliaferro, associate justice.

No. 53 State of Louisiana app'ee W. W. Smith, app't. Ans. filed case continued.

Whereupon the court adjourned until to-morrow at 9 o'clock a. m.

I hereby certify the above and foregoing to be a true extract from the minutes of this honorable court at the town of Natchitoches of the day, month and year first above mentioned, which minutes are now in my custody.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at the city of New Orleans this 15th day of November, *anno Domini* 1902.

T. McC. HYMAN, *Clerk.*

(Endorsed:) "N" Filed in evidence in 5231 Feb'y 23rd, 1903. J. H. Levy, d'y clerk.

107 UNITED STATES OF AMERICA,
State of Louisiana.

Supreme Court of the State of Louisiana.

WEDNESDAY, *August* 11*th*, 1869.

On Wednesday the 11th day of August court met pursuant to adjournment, were present their honors: John T. Ludeling, chief justice, J. G. Taliaferro and W. W. Howe.

STATE OF LOUISIANA, App'ee,
vs
W. W. SMITH, App't. } No. 53.

This case is dismissed by consent of counsels.

I hereby certify the above and foregoing to be a true extract from the minutes of this honorable court at the town of Natchitoches of the day, month and year first above mentioned, which minutes are now in my custody.

In testimony thereof, I have hereunto set my hand and affixed the seal of said court at the city of New Orleans, this 15th day of November *anno Domini*, 1902.

T. McC. HYMAN, *Clerk.*

(Endorsed:) "O." Filed in evidence in 5231, Feb'y 23, 1903. J. H. Levy, d'y clerk.

To the honorable judge of the circuit court of the United States, fifth circuit and western district of Louisiana, at the city of Shreveport:

The petition of Robert N. Smith and of Elizabeth A. Smith, wife of Marine Duvall, herein joined, authorized and assisted by
108 her said husband, and of William L. Smith and of Elizabeth W. Smith, widow of the late James F. Smith deceased, all residents of Shelby county, State of Kentucky and of John S. Smith, a resident of Denver, Colorado, and a citizen of Colorado with respect represents that they are the legal heirs of William W. Smith, deceased, late of the parish of Caddo, State of Louisiana, and as such have succeeded to all his property, rights and credits in the said State.

Your petitioners now represent and show to the court, that the State of Louisiana, through its constituted authorities did sell to the said W. W. Smith on the 14th day of May, 1853 a certain tract of land known as Silver Lake, situated in section 31 township 18, ranges 13 & 14 in the said parish of Caddo, containing an area of 186.57 acres at the maximum price of $1.25 per acre which, at the time, was paid into the treasury of the State by the said W. W. Smith as fully appears, and is shown by the certificate of sale hereunto annexed and made part of this petition for greater certainty.

Your petitioner represents and shown to the court, that, after said sale, the State of Louisiana, through its constituted authorities, did, on the 24th day of February, 1853, issue a patent to said tract of land to the said W. W. Smith as fully appears and is shown by said patent, hereunto annexed and made a part of this petition for greater certainty.

They further represent and show to the court that the State of Louisiana claimed and acquired said tract of land as swamp and overflowed land granted to the State by acts of Congress of 1849 & 1850; and that the State sold said land to the said W. W. Smith as swamp and overflowed lands. Your petitioner further represents and shows to the court that all sales of land in Louisiana
109 claimed as swamp and overflowed lands by the State government in La. and whether the land sold was of that character or not, were confirmed by the act of Congress approved March 22nd, 1855, entitled "An act for the relief of purchasers and locators of swamp and overflowed lands."

They further represent that said act of March 2nd, 1855 was extended to sales made after its passage and continued in force by the

act of Congress of March 3rd, 1857 to confirm all selections of swamp and overflowed lands by the several States made under the act of Congress of 1849 & 1850.

Your petitioners now aver, that the said act of Congress of March 2nd, 1855 for the relief of purchasers and locators of swamp and overflowed lands, confirmed the title to the said W. W. Smith to said tract of land known as Silver Lake, whether the said land belonged to the State of Louisiana, under the swamp land grants of Congress or whether it belonged to the United States.

Your petitioners further aver that the said W. W. Smith acquired a title to the said land both from the State of Louisiana and the United States by purchase from the State and by confirmation by act of Congress; and that said title is paramount to all subsequent claims from the Government and is indefeasible under the act of confirmation of the 2nd of March, 1855. They further represent and aver that they are the just, true and legal owners of the tract of land known as Silver Lake, which is illegally held from them, and a part of which, containing 40 acres or more is in the unlawful and wrongful possession of one George A. Turner of the said parish of Caddo and State of Louisiana and citizen of said State, who refuses to deliver the said part of said land to your petitioners, after amicable demand, as will be fully shown on the trial of this suit.

110 Your petitioners aver that the said part of said land in the possession of said George A. Turner is worth at least six hundred dollars. They further aver that your honorable court has jurisdiction over case herein presented.

Wherefore your petitioners pray for citation to the said George A. Turner and after due and legal proceedings had for judgment for the recovery of said tract of land, in the possession of the said George A. Turner as aforesaid, with its revenues from judicial demand. They further pray for all orders, decrees and writs necessary in the premises, for costs and general relief.

A. H. LEONARD,
LAND AND LAND,
Att'ys for Petitioners.

Filed Nov. 6th, 1885.
J. W. WHEATON, *Clerk.*

United States District Court, Western District of Louisiana.

ROBERT N. SMITH ET ALS.
vs.
GEORGE A. TURNER. } No. 80.

Now comes the defendant, The Vicksburg, Shreveport and Pacific Railway Company, by counsel, and for answer to plaintiffs' petition denies all the allegations thereof and requires strict proof. Further

answering, alleges that the sale or entry of said land as set forth in petition was cancelled by the register of the State land office on the 10th day of June 1853, as appears by the records of that office and which cancellation was duly notified to said W. W. Smith and that said sale, entry and patent are null and were done without
111 authority of law, in this to-wit:—

1st. Because the law under which said entries were made, had not been promulgated at the date of the entry.

2nd. Because said land had not at that time been legally surveyed nor had any survey thereof been recognized by the State of Louisiana.

3rd. Because the patent to said land was issued in error of the fact that the said entry had been cancelled before the law authorizing the sale of shallow lakes had been promulgated.

Further answering, defendant alleges that said land was never selected by the State of Louisiana, as swamp and overflowed lands and has never been reported to the Commissioner of the General Land Office and never approved by the surveyor general or by the Secretary of the Interior or land commissioner, and further alleges that said land was never listed or returned by the Secretary of the Interior to the State of Louisiana as swamp and overflowed lands and that the State of Louisiana has never claimed or acquired said land as such, and furthermore that said land did not and never did belong to that class of lands, known or designated as swamp and overflowed lands, but to that other class of lands known or designated as "shallow lakes" and therefore not embraced in the grant from the U. S. Government under acts of Congress of 1849 & 1850, of swamp and overflowed lands.

Defendant further answering, alleges that said defendant company is the owner of said land by good and sufficient title by grant from the United States Government under acts of Congress approved June 3rd, 1856 to the State of Louisiana to aid in the construction of railroads in the said State of Louisiana and which was accepted by said State of Louisiana for such purposes and all the requirements of said grant having been complied with by said State and the Vicksburg, Shreveport & Texas railroad the land de-
112 scribed in plaintiffs' petition being embraced in the said grant, was acquired by the said railroad company and duly certified or patented as belonging to the said company by the U. S. Government and which has been legally sold and transferred by said railroad company to defendant company and deed duly recorded. Further answering, defendant alleges that the land described in plaintiff's petition and sought to be recovered in this suit is worth at least ten thousand dollars.

Wherefore defendant prays that plaintiff's demand be rejected and for judgment decreeing defendant company to be the owner of said land and quieted in possession thereof, and for general relief.

FRANK P. STUBBS,
WISE AND HERNDON,
Of Counsel for Def't.

Filed July 29th, 1886.
J. W. WHEATON, *Clerk.*

United States Circuit Court, 5th Circuit, Western District of Louisiana.

ROBERT N. SMITH ET ALS.
vs.
GEO. A. TURNER & THE VICKSBURG, SHREVEPORT AND PACIFIC RAILROAD CO. } No. 80.

In this case by reason of the law and the evidence and the verdict of the jury, being in favor of the plaintiffs and against the defendants; it is ordered, adjudged and decreed that the plaintiffs, Robert N. Smith, Elizabeth N. Smith, wife of Marine Duvall; Elizabeth W. Smith, William L. Smith and John S. Smith be and they are hereby declared to be owners of the land in controversy
113 and entitled to the possession of same, said lands being known and described as follows, viz:

Commencing at the rock on range line between townships thirteen and fourteen and traverses Silver lake, thence south 59-1.2 east twenty-one 25.100 chains thence north, 45 east one thousand feet thence north 10″ east six hundred and eight feet to point of beginning of land in possession of defendant Geo. A. Turner, thence same course five hundred and seventy feet to a willow tree thirty-two inches in diameter, thence north 23″ east five hundred and fifteen feet, thence north 68″ 40′ west four hundred and fifty feet, thence south 36″ 40′ west two hundred and ninety-seven feet, then from Willow corner south 8″ 35′ west two hundred and twelve feet, thence south 55″ 20′ west, three hundred nine feet, thence south 31″ 40′ east four hundred and twenty-five feet, thence north 33″ 40′ west five hundred feet, thence north 55″ 15′ east four hundred and eighty feet, thence north 85″ east three hundred and sixty-four feet, thence north 73″ 20′ east two hundred and twenty feet, thence north 64″ 3′ east three hundred and thirty-five feet, thence north 30″ 1-2′ east one hundred and ninety feet, thence north 0″ 35′ east six hundred and fifty-two feet, thence along bank of Red river, eleven hundred and sixty-five feet to a point on east line of the ditch at its junction with Red river, thence south 19″ 45′ west six hundred feet, thence north 70.1-2″ west one hundred and twenty feet to the willow tree aforesaid, containing thirty-five 18-100 acres situated in the parish of Caddo, Louisiana, as shown and described on map and survey of same made by W. R. De Voe, civil engineer on file and of record in said cause.

It is further ordered that writs of possession issue in favor
114 of plaintiffs and against defendants and it is further ordered and decreed that plaintiffs have judgment against defendants for costs.

It is further ordered and decreed that plea of *res judicata* be overruled.

Done, read and signed in open court, on this August 4th, A. D. 1886.

ALECK BOARMAN, *Judge.*

Filed August 4th, 1886.

United States Circuit Court, Western District of Louisiana.

ROBERT N. SMITH ET ALS. vs. GEORGE A. TURNER, } No. 80.

Be it remembered that on the trial of this case on the 29th day of July 1886, the defendant The Vicksburg, Shreveport and Pacific Railroad Company by counsel offered E. M. Smith; Thomas Phillipps; E. Jacobs, as competent witnesses to prove that the land described and claimed by the plaintiffs in their petition under a certificate and patent from the State of Louisiana and which is claimed by defendant under a grant from the United States Government to the State of Louisiana to aid said rail road and for which defendant prays judgment recognizing their ownership etc., is worth the sum of ten thousand dollars whereupon plaintiffs' counsel objected on the ground that the only part of said Silver Lake tract of 186 acres, that was in controversy in this suit was the part alleged to be in the possession of the defendant Turner and it was admitted by counsel for defendant that said part or parcel of land was not worth exceeding two thousand dollars.

115 The objection of the plaintiffs to the said evidence tendered by defendant was sustained by the court and the evidence or admission excluded for the following reasons, to-wit:

The testimony of the above named witnesses was not heard because the petition claims only the number of acres of land held by or in the possession of Geo. A. Turner the defendant, and that the judgment in the case, if for plaintiffs could effect only the lands held by Turner and the claim set up by the defendant Turner or by the railway whatever it may be does not make this suit for more than the number of acres of land claimed by the plaintiffs which is about forty acres more or less and is shown by the admission of counsel not to be worth more than two thousand dollars.

If the suit involves title to the 186 acres of land, then the land to be passed on is worth about $10,000.00, as is admitted by counsel for plaintiff.

To which ruling, defendant by counsel objected and tenders this bill of exceptions, which is accordingly allowed and ordered filed and made part of the record of this case.

ALECK BOARMAN.

August 4th, 1886.

Filed Aug. 4th, 1886.

E. J. NOLAND, *D'y Clerk.*

A true copy.
Attest: J. B. BEATTIE, *Clerk.*

(Endorsed:) "P" Filed in evidence in 5231, Feb'y 23, 1903. J. H. Levy, d'y clerk.

116 V., S. & P. R. R. Co. *vs.* TIBBS ET ALS. } No. —.

Note — Evidence Offered by Defendants.

All pleadings in case Heirs of Smith *vs.* Turner No. 80 P. T.
Verdict " " " "
Judgment " " " " "
Decree supreme court " " " " " "
Writ of possession and return thereon case of Heirs of Smith *vs.* Ford *et als.* No. 139 U. S. court western district of Louisiana.
Record in suit R. N. Smith *et als. vs.* Ford *et als.* No. 139.
Certificate purchase by W. W. Smith R. P. 44–45
Patent to " " " P. 45–46
Field notes and traverse Silver Lake between P. 46–47
Map " P. " "
Field notes T. 18 R. 13 & 14. " P. 37–41
Map " " 44–45
Map " " 46–47
Act Gen'l Assembly La., authorizing register land office to sell shallow lakes in La., approved April 30, 1853. R. page 56–57.
Act Gen'l Assembly La., No. 248 session 1852.
Admission testimony F. A. Leonard. Character land.
Entire record Smith minors R. page 27–34.
Entire record. Jno. Brown, tutor, *vs.* J. F. Smith R. p 10–12.
Petition revival suit State *vs.* W. W. Smith R. p. 52
Answer J. W. Smith, adm. R. page —
Judgment homologating final a/c J. W. Smith, admn. R. page 74 "I."

117 (Endorsed:) Filed in evidence in 5231, Feb'y 23rd, 1903. J. H. Levy, d'y clerk.

Admission.—That if F. A. Leonard was present, he would testify that: Has known tract of land in controversy since year 1849, it was then, has been ever since, and is now low land overflowed by water from Red river except at low stages of water on the river and in low stages of water in Red river said land was and is to a considerable extent of this tract subject to overflow from rain water flowing from the adjacent hills.

It is admitted that F. A. Leonard, if present, would testify to above statement.

(Endorsed:) "3." Filed in evidence in 5231, Feb'y 23, 1903. J. H. Levy, d'y clerk.

To the honorable judges of the circuit court of the United States, fifth circuit and western district of Louisiana, at the city of Shreveport:

The petition of Robert N. Smith and Elizabeth A. Smith, wife of Marine Duvall, herein joined, authorized and assisted by her said husband and William L. Smith and of Elizabeth W. Smith, widow and universal legatee of the late James F. Smith deceased, all residents of Shelby county, State of Kentucky and of John S. Smith, a resident of Denver, Colorado and a citizen of the State of Colorado with respect represents:—

118 That they are the legal heirs and representatives of William W. Smith, deceased, late of the parish of Caddo, and State of Louisiana and as such have succeeded to all his property, rights and credits in said State.

Your petitioners represent that the State of Louisiana through its constituted authorities did sell to said W. W. Smith on the 14th day of May, 1853, a certain tract of land known as "Silver Lake," situated in sections 31 & 32, township 18, ranges 13 & 14 in the said parish of Caddo, containing an area of 186.57 acres, at the maximum price of $1.25 per acre, which, at the time was paid into the treasury of the State by the said W. W. Smith as will fully appear from the certificate of said sale of said date hereto annexed and made part of this petition.

Petitioners further show that on the 24th day of February, 1855, the State of Louisiana, through its constituted authorities did issue a patent to said tract of land to the said W. W. Smith as will appear from the said patent hereto annexed and made part of this petition.

Petitioners further represent that the State of Louisiana claimed and acquired said tract of land as swamp and overflowed land granted to the State by the acts of Congress of 1849 and 1850 and that the State sold said land to the said W. W. Smith as swamp and overflowed lands.

Petitioners further represent that said tract of land was at the date of the passage of said acts of Congress swamp and overflowed lands, that after the passage of the said acts the State claimed and sold the same as swamp and overflowed lands and that such sale, whether the land sold was of that character or not, was confirmed by the act of Congress approved March 2, 1855, entitled "An

119 act for the relief of purchasers and locators of swamp and overflowed lands, which act was extended and continued in force by act of Congress March 3rd, 1857 to confirm all selections,

of swamp and overflowed lands by the several States under the acts of 1849 and 1850.

Petitioners further represent that by said purchase from the State of Louisiana said W. W. Smith acquired the legal title to said tract of land and that if there was any defect in said title as against the United States the said sale by the State was confirmed by act of 2nd of March 1855 aforesaid.

Wherefore petitioners aver that the said Smith was the legal owner of said land, and that his legal title has descended to and vested in them as his lawful heirs and representatives.

Wherefore they further represent that they are the just, true and legal owners of said tract of land known as "Silver Lake" that in the suit entitled Robert N. Smith *et als vs.* Geo. A. Turner *et als* No. 80 of docket of this court, petitioners on August 4, 1886 obtained a final judgment in their favor recognizing them as the legal owners of 35.18/100 acres of said tract occupied by said Turner as lessee of the Vicksburg, Shreveport and Pacific Rail Road Company, that all the remainder of said Silver Lake tract is in the illegal and wrongful possession of the following named persons, viz:

Jake Ford, —— Lovelady, Sam Smith, Horace Logan, Andrew Yancy, John Gray, Isaac Taylor, Henry Ford, —— McClelland, Nelson Tate, —— McGrew, Lizzie Watson, Mrs. Jane Furman, wife of Dr. Samuel Furman, F. Robinson, Ellen Bokenberry, Nelly Hill, Sol Stokes, Mary Wagner, Mato Ellis, Frank Crawford, Ellen Thornton, Ellen Wesley, Florence Simpson, Henry Simpson, F. Collins,
A. Dixson, Kitty Harris, M. Dorsey, Merrell Dorsey, Sissy
120 Hall, Simon Ford, Phillis Moss, Rachel Boyd, Jane Jones,
Mingo Butler, Geo. Watts, Gilbert Edwards, Clarinda Edwards, Jennie Tibbs, Harriet Hope, F. Legardy, D. Logan, Tobe Williams, Jim McCain, Laura Williams, Peter Shivers, Bella Scott, Si Mosley, Jane Williams, Delphy McDonald, Josiah Mosely, Rainey Carter, Nancy Washington, Hiram James, Marie Chew, Isaac Connor, Widow Jones, Widow Harris, Geo. Nicholson, Jordan Moss, Nellie Davis, Mrs. Dowd, Wm. Walker, Mrs. F. Cora Levy, widow, Rosa Williams, C. Lester, Charity Lester, Harriet Bagley, Cinderella Gardner, E. Norrington, Simon Peterson, Henry Taylor, Nathan Anderson, Martha Cook and Dave Miller, all residents of Caddo parish and citizens of the State of Louisiana and whose Christian names are given as far as they are known to or can be ascertained by petitioners.

Petitioners further represent that said defendants are in possession of the remainder of said tract as hereinbefore described, without title or color of title, but as mere trespassers and squatters and as possessors in bad faith are liable to petitioners for rents during their occupancy of said tract.

Petitioners further represent that they annex hereto and make part hereof a map and plat made by W. R. De Voe, city surveyor of the city of Shreveport, showing the metes and bounds of said Silver Lake tract according to the United States map and field notes.

Petitioners further represent that the tract of land herein sued for exclusive of the parcel of 35-18/100 acres involved in the suit vs. Turner as above set forth, is worth the sum of one thousand dollars per annum.

Wherefore premises considered, petitioners pray for citation to said defendants and after due proceedings had for judgment against them decreeing petitioners to be the legal owners of the tract
121 of land herein sued for and ordering them to be put in possession of same by a writ of possession according to law. And for judgment against said defendants *in solido* for the rents and revenues of said land at the rate of one thousand dollars, per annum from the commencement of their unlawful possession until petitioners are put in possession of the same and for all costs of this suit.

Petitioners further pray for all orders necessary and relief in law.

A. H. LEONARD,
LAND & LAND,
Attorneys.

(Endorsed:) Filed July 5th, 1888. E. J. Nolan, d'y clerk.

We, the jury, find for the plaintiffs as claimed in petition against all the defendants except Mrs. Jane Furman & husband and as to them find for plaintiffs on their disclaimer without cost against them, and, we find a verdict of non-suit on claim of plaintiffs for rents and revenues.

HENRY FLORSHEIM, *Foreman.*

(Endorsed:) Filed July 17th, 1889. J. B. Beattie, clerk.

U. S. C. C., Western District of La.

R. N. SMITH ET ALS. *vs.* JAKE FORD ET ALS. } No. 139.

122 Now come Jake Ford, —— Lovelady, Sam Smith, Horace Logan, Andrew Yancy, John Gray, Isaac Taylor, Henry Ford, —— McClelland, Nelson Tate, —— McIrew, Lizzie Watson, —— Robinson, Ellen Bokenberry, Nelly Hill, Sol Stokes, Mary Wagner, Mato Ellis, Frank Cradford, Ellen Thornton, Ellen Wesley, Florence Simpson, Henry Simpson, F. Collins, A. Dixon, Kitty Harris, M. Dorsey, Merrell Dorsey, Sissy Hall, Simon Ford, Phillis Moss, Rachel Boyd, Jane Jones, Mingo Butler, Geo. Watts, D. Logan, Tobe Williams, Jim McCain, Laura Williams, Peter Shivers, Bella Scott, Nancy Washington, Hiram James, Marie Chew, Isaac Conner, Widow Jones, Widow Harris, Geo. Nicholson, Jordan Moss, Nellie Davis, Mrs. —— Dowd, Wm. Walker, Mrs. F. Cora Levy, widow,

Rosa Williams, C. Lester, Charity Laster, Harriet Bagley, Cinderella Gardner, E. Norrington, Simon Peterson, Henry Taylor, Nathan Anderson, Martha Cook and Dave Miller, all residents of Caddo, and deny generally and specially all the allegations made in plaintiff's petition and requires strict proof.

WISE & HERNDON,
YOUNG & THATCHER,
Attorneys.

(Endorsed:) March 1st, 1889. J. B. Beattie, clerk.

In United States Circuit Court.

ROBERT N. SMITH ET ALS.
vs.
JAKE FORD ET ALS. } No. 139.

Now comes Mrs. Jane Furman and husband and for answer to plaintiffs' petition aver that they are wrongfully made de-
123 fendant- herein that they — now or at the time this suit was brought or before or since in possession of any portion of the lands claimed by plaintiffs and made no pretense to the possession or ownership of any part thereof.

Premises considered, your petitioners pray that they may be dismissed without costs and for general relief.

WISE & HERNDON,
Att'ys for Defendants.

(Endorsed:) Filed March 1st, 1889. J. B. Beattie, clerk.

U. S. Circuit Court, Western District of Louisiana.

R. N. SMITH ET ALS.
vs.
JAKE FORD ET ALS. } No. 139.

In this case by reason of the law and the evidence and the verdict of the jury, it is ordered, adjudged and decreed that there be judgment in favor of plaintiff against all the defendants; that plaintiffs be and they are decreed to be the owners of that certain tract of land situated in the parish of Caddo, known as "Silver Lake" lying in sections thirty-one and thirty-two, township eighteen, ranges thirteen and fourteen, containing one hundred and eighty-six and fifty-seven*th* hundredths acres, according to the official plat of the survey of the said land, and according to the map of same made by W. R. De Vae, surveyor, filed in evidence in this cause and that writs of possession issue in favor of plaintiffs against defendants.

It is further ordered that there be judgment as of non suit on claim of plaintiffs for rent and revenues and on the call in warranty of Mrs. F. Levy.

124 And it is further ordered and decreed that plaintiffs recover costs to be taxed as against all defendants except Mrs. Furman and husband.

Done, read and signed in open court this 19th day of July, A. D. 1889.

ALECK BOARMAN, *Judge.*

(Endorsed:) Recorded on folio No. 54, Judgment Book vol. A. Filed July 20th. 1889. J. B. Beattie, clerk.

UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Judicial Circuit and Western District of Louisiana.

R. N. SMITH ET ALS. *vs.* JAKE FORD ET ALS. } No. 139.

The President of the United States to the marshal of the United States for the western district of Louisiana, Greeting:

Whereas by a decree of the said court issued on the 20th day of July, A. D. 1889 and entered of record in the above entitled and numbered cause by which it is ordered, adjudged and decreed that writs of possession issue in favor of plaintiffs and against defendants.

Now therefore, you are hereby commanded in the name of
125 the President of the United States and of our said court after all legal notices and delays to enter upon and put the plaintiffs in above entitled and numbered cause in possession of the tract of land in the city of Shreveport known as "Silver Lake" as per plat and survey made by W. R. De Voe now on file and of record in said suit together with all the buildings and improvements thereon, and how you shall have executed this writ, make due return thereof according to law.

Witness the Honorable Melville A. Fuller, Chief Justice of the Supreme Court of the United States at the city of Shreveport, Louisiana, this the 18th day of September A. D. 1889, and of the Independence of the United States of America, the 114th year.

J. B. BEATTIE, *Clerk.*

Received the within writ of possession Sept. 18th, 1889 and on Sept. 18th, 19th & 20th, 1889, proceeded to execute the same by reading said — to Jake Ford and other defendants all of whom ex-

cept Horace Logan delivered possession of the portion of the premises described in said writ and occupied by them respectively to plaintiffs, R. N. Smith *et als.*, represented by F. A. Leonard by leasing said portions from said plaintiffs and I further proceeded to execute this writ by serving a certified copy hereof on said Horace Logan at his domicile by handing the same to his wife, Mrs. Logan, the said Horace being absent from home at the time of the said service and the said Horace having evaded personal service by purposely absenting himself and three days after said service the said Horace having refused to obey said writ and to vacate that portion of the premises occupied by him, I compelled said Horace to depart therefrom and put said plaintiff represented by said agent in free possession of said premises, wherefore I return this writ fully executed.

A. H. BERNSTEIN,
Dy Marshal.

126 (Endorsed:) Filed May 19th, 1890. J. B. Beattie, clerk.

First District Court, Caddo Parish, Louisiana.

V., S. & P. R. R. Co.
vs.
ALBERT TIBBS ET ALS. } No. 5231.

FEB. 23RD, 1903.

It is admitted that C. C. Harvey became the purchaser of the land claimed by the plaintiffs in this suit, that the sale was made by order of the United States circuit court for the 5th circuit, western district of Louisiana, in the suit of The Farmers' Loan & Trust Co. *vs.* V. S. & P. R. R. Co., that there was opposition made in said court to the confirmation of said sale which is now pending.

It is further admitted that C. C. Harvey, above named is the president of the plaintiff R. R. Co.

Two agreements of counsel filed in evidence and marked "A" & "B."

The plaintiff, being about to begin the introduction of its testimony, the defendant, by counsel objected to any evidence being received in support of plaintiff's claim of title in this case on the ground that all of the issues involved in this suit have been tried and determined in the suit of R. W. Smith and others *vs.* Geo.
127 A. Turner, The V. S. & P. R. R. Co. substituted as defendant, No. 80 on the docket of the U. S. circuit court, western district of Louisiana, sitting at Shreveport, and in support of said objection, annex and make a part of the same, the record in said suit.

Which objection the court overrules. To which ruling of the court, counsel for defence except and reserve this in lieu of their bill. This objection, ruling and bill to be made general to apply to all evidence of a like character.

Act of Congress, approved June 3rd, 1856, 11th U. S. Statutes page 18, filed in evidence by reference.

Acts Nos. 98 & 198 of the General Assembly of the State of Louisiana, session of 1857, filed in evidence by reference.

Act No. 228 of the General Assembly of 1853 filed in evidence by reference.

Act No. 38 of the General Assembly of Louisiana of 1877 filed in evidence by reference.

Offered in evidence, certified list of lands from the Secretary of the Interior, to the lands certified to the State of Louisiana, for the V. S. & Texas R. R. Co. under act approved June 3rd, 1856.

It is agreed in this offering, for the purpose of making the transcript of appeal for the supreme court, that only the lands involved in this litigation shall be copied into the transcript.

128 Same is filed in evidence and marked "C."

Offered in evidence certified copy of act of mortgage from C. G. Young, president, V. S. & T. R. R. Co., to Jno. Ray, passed before B. D. Sheperd, recorder Ouachita parish, of date September 1st, 1857.

Same is filed and marked "D."

Decree in case of Henry R. Jackson and others *vs.* V. S. & T. R. R. Co. No. 5033, filed in evidence and marked "E."

Act of reorganization of the V. S. & P. R. R. Co., filed in evidence and marked "F."

Certificate from Commissioner of the General Land Office of the Department of the Interior, with list of lands reserved under act of 1856, filed in evidence and marked "G."

Certificates of the governor of Louisiana to the completion of the road, as shown by certificates, filed in evidence and marked "H."

Deed of sale, with certificate of record in parish of Caddo, by Master Woolfley, in No. 5033, Henry R. Jackson *et al. vs.* Shreveport and Texas R. R. Co. Filed in evidence and marked "I." This offering to be copied but once in the record.

Offered in evidence copy of departmental decision dated March 20th, 1872 in the case of Jno. W. Collins *vs.* V. S. & P. R. R. Co.

129 The object of the evidence is to prove that the Federal Government has recognized the title of the V. S. & P. R. R. Co. under act of Congress of 1856.

To which offering, counsel for defence object on the ground, first, that the opinion of the Federal Government or of the officers of the Federal Government is not admissible in evidence to sustain title to land. Secondly, on the ground that the decision offered is a decision in the case of Jno. W. Collins *vs.* V. S. & P. R. R. Co., which is, as to these defendants, *res inter alios acta*, and can have no effect as against them.

Objection overruled. Evidence received to go to its effect.

To which ruling of the court, defendants except and tender this in lieu of a bill.

Document offered filed in evidence and marked "J."

Offered in evidence the opinion of the Secretary of the Interior of date March 18/81 on the contest of James A. King and Ambrose Martelle *vs.* V. S. & P. R. R. Co.

Objected to by defence on the same ground as above stated. Same ruling and same bill.

Document offered filed in evidence and marked "K."

Certified copy of act of mortgage to Farmer's Loan & Trust Co., embracing the land in question and certificate of recordation in the parish of Caddo and decree of the U. S circuit court, in suit of Farmer's Loan & Trust Co. trustee, *vs.* V. S. & P. R. R. Co. No. 216, U. S. circuit court, filed in evidence and marked "L."

"Evidence for plaintiff on plea of *res judicata*."

130 Pages 4, 7, 8, (petition) page 50 (exception of def't to judgment of court on exception), page 51 (motion for appeal and appeal bond on behalf of plaintiff), page 52 (petition on revival & answer of def't), page 53, (amended answer of def't), page 65 (verdict of jury, judgment of the court, and motion for new trial), page 66 (motion for appeal), page 67 (order of appeal), page 70 (order of appeal & appeal bond given by def't Smith), page 72 (clerk's certificate to foregoing transcript), all of the printed transcript of suit No. 5135, State of La. *vs.* W. W. Smith, as contained in printed transcript in suit No. 80 heretofore referred to, filed in evidence and marked "M."

Certificate of the clerk of supreme court of Louisiana and minutes of the court in the case of The State of La. *vs.* W. W. Smith, of date Aug. 14th, 1866, filed in evidence and marked "N."

Certificate of the clerk of supreme court of La., showing minutes of the court with reference to the case of The State of Louisiana *vs.* W. W. Smith of date Aug. 11th, 1869, filed in evidence and marked "O."

Offered in evidence page 76 from certificate from Department of Interior.

To which counsel for defence object on the ground that the letter of Stockledger, written in reply to a letter addressed to him by the attorney of the V. S. & P. R. R. Co. is not evidence and the statements therein made can not be received as against the defendants in this case, because they were not made under oath and no opportunity to cross examine and the plaintiffs can not make
131 evidence for themselves by writing letters to any one and getting answers to them and further, there is other and better evidence than the facts stated in the latter to-wit:—the records of the Department of the Land Office at Washington, which can be shown only by the records themselves or duly authenticated copies of them. Object further on the ground that the signature thereto has never been proven and the document is not properly authenticated.

Objection sustained. Bill reserved by counsel for plaintiff.

Plaintiffs rest.

Defence.

List of documentary evidence to be filed by defence, offered in evidence.

Same is filed in evidence and marked "1."

Offered in evidence certificate of purchase by W. W. Smith from the State of La. found on pages 44 & 45 of printed transcript.

Objected to by counsel for plaintiff on the ground that the validity of the certificate and patent offered in evidence was the subject of suit in the case of The State of Louisiana *vs.* W. W. Smith and was therefore adjudged, annulling and cancelling the entry to W. W. Smith and as shown by the certificate of the clerk of supreme court was dismissed on appeal and judgment of district court sustained cancelling said title.

132 Objection overruled. The evidence is received to go to its effect. To which ruling of the court counsel for plaintiff excepts and tenders this in lieu of a bill.

Offering filed and marked "2."

Admission as to testimony of F. A. Leonard offered in evidence.

Counsel for plaintiff object to parol testimony to prove character of land.

Objection overruled. Bill reserved for plaintiff.

Document offered filed and marked "3."

A. H. LEONARD, upon being duly sworn, says:

I have known the tract of land in controversy since 1849 and it was then, has been ever since and is now low land, overflowed by water from Red river, except at low stages of the water in the river and in low stages of the water in the river said land was and is, to a considerable extent of the tract, subject to overflow from rain water, flowing from the adjacent hills.

Cross-examined:

Q. Mr. Leonard, when you first knew that, was it not a fact that the lands on the river front were higher then the body of this particular land? Was there not a ridge of higher land on the front?

A. When I first knew the land, that portion of it which was the bank of Red river was higher then the bed of the lake back of it. That is always the case on Red river.

Q. Was not that land known as Silver Lake largely a sheet of water most of the time in the early days?

133 A. No sir. Not in 1849. There was a great deal more water then than there has been in subsequent years though.

Q. It filled up later?

A. No. There was a ditch cut, I don't know when but it was cut when I came here, that enabled all of the water to go out of the lake, that is, a considerable portion of it, and also all of the water to run in. The ditch was cut for the purpose of draining the lake.

Q. When the ditch was cut, it was really a receptacle for the water from the hills?

A. Yes sir. It was a basin that held the water.

Q. Is it not a fact that we used to go fishing in Silver lake?

A. Yes sir. Fished there a good deal.

It is admitted that all portions of the record in the case of the State of Louisiana *vs.* W. W. Smith, Jno. W. Smith, admr. No. 5135, offered by the plaintiff on this trial from the transcript of the case of the V. S. & P. R. R. Co. in error, *vs* R. N. Smith *et al.* Supreme Court of the U. S. are the same documents annexed to the plea of *res judicata* filed in that case and are the same documents filed in support of the plea of *res judicata* in that case.

Defence offers in evidence exception and plea of *res judicata* in the suit of R. N. Smith *et al. vs.* G. A. Turner *et al.*, No. 80, as found on pages 9 & 10 of the printed transcript in the case in the supreme court already referred to.

Filed and marked "4."

Defence closed.

134 Plaintiff in rebuttal.

It is admitted that the property involved in this case is worth more than twenty-five thousand dollars.

Copy of pleadings in the case of the heirs of Smith *vs.* Turner No. 80 in U. S. circuit court, filed in evidence and marked "P."

This evidence is received only as applicable to the plea of *res judicata* filed by defence.

Evidence closed.

The foregoing pages contain a correct transcript of my short hand notes taken in this case.

SAM. L. BARKSDALE.

135-1 and 2 United States Circuit Court, Fifth Circuit, Western District of Louisiana.

FARMERS' LOAN AND TRUST COMPANY, Trustee, Complainant,
vs.
THE VICKSBURG, SHREVEPORT AND PACIFIC RAILROAD Company *et al.*, Defendants. } No. 216.

Appearences.

For complainant: Messrs. Turner, McClure & Ralston, Mr. Harry H. Hall.

For defendant, Vicksburg, Shreveport and Pacific R. R. Co.: Mr. Frank P. Stubbs.

" " Henry D. Hearns: Messrs. Leonard & Randolph.

" " Central Trust Company of New York: Messrs. Farrar, Jonas & Kruttschnitt, and Messrs. Butler, Notman, Joline & Mynderse.

" " Robert B. Blanks: Messrs. Lamkin & Millsaps.

135–3 *Bill of Complaint. Filed April* 3, 1900.

H. D. Hearms
vs.
Vicksburg, Shreveport & Pacific R. R. Co. } No. 215.

To the honorable the circuit court of the United States for the fifth circuit and western district of Louisiana:

Henry Denhart Hearms, a citizen of the State of Illinois, brings this his bill of complaint for himself and on behalf of all other *bona fide* holders of bonds hereinafter described against the Vicksburg, Shreveport & Pacific Railroad Company, a corporation created by and existing under the laws of the State of Louisiana, having its domicile in said western district, a citizen of the State of Louisiana, and thereupon your orator complains and says:

That heretofore and on or about the 1st day of January, 1886, the said railroad company being thereunto duly authorized, by its president and secretary and under its corporate seal, made and executed its 2500 bonds, known as third mortgage and land grant bonds, numbered from 1 to 2500, inclusive, each for the sum of one thousand dollars, bearing said date, by the terms of which bonds said company promised to pay to the holder of each bond the sum of one thousand dollars, gold coin of the United States, on the 1st day of January, 1916, with interest thereon from the 1st day of January, 1888, payable semi-annually, at the rate of three per cent. for three years, four per cent. for three years and five per cent. thereafter, in gold coin of the United States, on presentation and surrender of the respective interest coupons annexed to the said bonds.

And your orator avers, that in order to secure the full and punctual payment of the said bonds and coupons thereto attached, the said railroad company, by public act, specially mortgaged and hypothecated unto the Central Trust Company of New York, and unto any future holder of said bonds and coupons, the following described property situated in said western district, viz: "All and singular, the Vicksburg, Shreveport and Pacific railroad, running from a point on the Mississippi river, nearly opposite the city of Vicksburg, and near or at the town of Delta in the State of Louisiana, thence westward through the northern portion of Louisiana by way of
135–4 Monroe on the Ouachita river, thence to Shreveport on the Red river, thence westward to the State line of Texas, and all and singular the immunities and franchises, which have been or may hereafter be acquired by the said railroad company, and all rights of way, lands, property, water stations, warehouse buildings, machine shops, structures, terminal facilities and improvements which have been or may hereafter be executed thereon, and all and singular the cars, locomotives, engines, wagons, machinery, fixtures,

utensils and effects of every description and nature whatsoever, in use or intended to be used upon the said railroad, or in any way attached or appertaining to same, or which may hereafter be placed upon or become attached to the said railroad in any manner or for any purpose without any exception or reservation, including all the lands in any way acquired by the said railroad company, either by purchase, donation or otherwise for any purpose, whether for right of way or depot grounds—including all unsold lands which have been or which shall hereafter be acquired by or granted by land grants or otherwise to said railroad company.

And your orator avers, that in said mortgage it is stipulated, in and by said mortgage and bonds, the said railroad company promised and bound itself to pay said bonds and the interest coupons attached to same punctually as they matured to the holders of same, at its agency in the city of New York and at the dates set forth in said bonds and coupons or whenever such principal or interest became sooner due by default.

It being further stipulated in said act of mortgage that if the said railroad company shall at any time make default in the payment of any interest falling due on said bonds, or any of them, and such default shall continue for the space of three hundred and sixty-five days, that the principal of said bonds shall thereupon become due and payable.

Your orator avers, that the said mortgage as shown by its terms is a third mortgage on the said railroad and appurtenances and a first mortgage on the lands granted to the said company, and that the property mortgaged is in value inadequate and insufficient to pay the debt secured by mortgage thereon.

135-5 Your orator further avers, that in and by said mortgage it is provided that the railroad may from time to time sell said lands, freed from the lien of the mortgage, upon payment of the proceeds of sale as received to the said Central Trust Company, which proceeds shall be applied, first, to the payment of coupons attached to said bonds in the order of maturity; second, to the creation of a sinking fund for the redemption of said bonds. It being agreed that as often as the sinking fund shall amount to five thousand dollars or more, the trustee shall advertise for bids for sale to him of bonds secured by said mortgage, and that the money in the sinking fund shall be applied, as far as it will go, to the purchase of such bonds from lowest bidder, such advertisement to be inserted once a week for at least three weeks in a newspaper published in the city of New York.

Your orator avers, that it is further provided in and by said mortgage, that the said railroad company will on or before the second Wednesday of September, in each and every year, until all of said lands are sold, fix a price at which bonds thereby secured may at option of holder be used instead of cash in the purchase of such lands, and on such use of any of said bonds, the same are to be surrendered to the said Central Trust Company to be canceled.

Your orator further avers, that in and by said mortgage the said railroad company bound itself not to alienate, deteriorate, or in — manner incumber the said property so mortgaged to the prejudice of the said mortgage.

Your orator further avers, that said mortgage was not by public act duly recorded, that it imports a confession of judgment, and that said mortgage was executed and signed by the president and secretary of the said railroad company, and under its corporate seal in behalf of said company, they being duly authorized by the directors of said company at a meeting duly held on November 27, 1885, and it being within the powers of said directors under the charter of said company, and under the laws governing corporations, to provide for and authorize the issuance of said bonds and coupons, and the mortgage securing same.

Your orator avers, that he is the holder and owner of (78)
135-6 of said bonds, numbered respectively 309 to 338, inclusive; 391 to 404, inclusive; 420 to 438, inclusive, 1010; with (54) coupons, each for fifteen dollars in gold, to each of said bonds attached, which said bonds with coupons are hereto annexed and made part of this bill.

And your orator avers that each of said bonds bears the certificate of the Central Trust Company endorsed thereon.

An authentic copy of said act of mortgage is also annexed to and made part of this bill, and marked Exhibit "A."

Your orator avers, that the said railroad has defaulted in the payment of interest falling due on the said bonds, that such default has continued for more than three hundred and sixty-five days, and that as a consequence of such default the said bonds have become and are due and payable.

Your orator avers, that among the lands granted to the said railroad company, and so as aforesaid mortgaged to secure the said third mortgage and land grant bonds, were, at the date of said mortgage, four hundred and twenty thousand nine hundred and twenty-four acres of land, donated by the United States to the State of Louisiana, in aid of the construction of railroads, by act of Congress approved June 3, 1856, and by the said State accepted, and under said act granted to the Vicksburg, Shreveport & Texas Railroad Company by act of the General Assembly of that State, approved March 11, 1857, which land was acquired from said V., S. & T. R. R. Co., by Henry R. Jackson, and others, and was by them sold and conveyed to the said Vicksburg, Shreveport & Pacific Railroad Company; and which land lies along the line of the railroad of said company and in said western district, and is particularly described in patents from the State and United States, or in lists of lands approved to the said Vicksburg, Shreveport & Texas Railroad Company by the Secretary of the Interior of the United States, all of which are referred to and made part of this bill.

Your orator avers that, it appears from the 15th annual report of the said railway company, for year ending June 30, 1899, that the

said company has disposed of 173,203.24-100 acres of said
135–7 lands, and with proceeds of sale has taken up bonds to the amount of $679,250, and coupons to the amount of $83,412.50, leaving still outstanding bonds to the amount of $1,820,750.00; with coupons thereto attached.

That it further appears from said report, that the railroad company yet has 190,269.51–100 acres of land unsold. It thus appearing that nearly one-half of the lands have been disposed of, that the proceeds of sale have been paid over to the holders of about ¼ of the bonds, leaving to the holders of ¾ of the bonds about one-half of the lands as security for their bonds.

Your orator avers, that the said lands were under said mortgage the common pledge and security of the holders of all the said land grant bonds, and that the true intent and meaning and the legal effect of these stipulations in the said act of mortgage relating to the disposal of said lands, was and is that the proceeds arising from sale of said lands should be equally apportioned to each of the said bonds and paid over to the holders of same. That on acting under said stipulations it was and is the duty of said company and of the directors and officers to see that the true intent and meaning of said stipulations be carried into effect, and that an equal amount should be apportioned to each bond out of the proceeds of sale of said land, and paid over to the holder thereof.

But your orator avers, that the said company through its directors and officers have, in distributing the proceeds of sales of said land, given an unjust, unfair and illegal preference to some of the holders of said bonds to the prejudice and detriment of other holders of same. And your orator avers that he is informed that such unjust preference was given to the directors and officers of said railroad company, or some of them.

Your orator further avers, that he is informed and believes that the said railroad company through its officers and directors have given an unjust and illegal preference to certain holders of said bonds, and paid to them coupons for interest, while failing and refusing to pay such coupons to your orator and other holders of said bonds and coupons.

Your orator avers, that he will be irreparably injured if
135–8 the said railroad company through its directors and officers persists in disposing of said lands so as to give a preference to some holders of said bonds, and leave some holders of bonds, including your orator, without any payment whatever, and without the security of the mortgage on such lands, to which they are equitably entitled.

Your orator further avers, that under the said mortgage it was, as hereinbefore set forth, provided that the proceeds arising from the sales of said lands should be paid over to the Central Trust Company, to be applied first to the payment of the coupons attached to the bonds secured by such mortgage on said lands. And your orator avers further that according to the statement and report of

the directors and officers of said company, the sum of one hundred and thirteen thousand nine hundred and five and 54–100 dollars has been received by said company as cash proceeds of sales of lands, an amount more than sufficient to pay three of the coupons of each of the said bonds, and yet only two of the coupons to bonds held by your orator have been, and a very large sum exceeding forty thousand dollars, which should have been applied to the payment of the coupons aforesaid, has been either diverted by the said railroad company, or illegally and inequitably withheld from the holders of bonds, or used in giving an illegal and unjust preference to certain holders of some of said bonds.

Your orator avers, that the said railroad company is in fact, and is by the report aforesaid of the said company, shown to be hopelessly insolvent: that said company on the 30th June, 1899, owed some three millions of dollars for interest on its bonds, due and unpaid, and that the amount so due for such interest has since that date been largely increased.

Your orator avers, that the directors and officers of said railroad company are so administering its affairs and business as to increase largely its indebtedness, and that under their direction and control the said company has become insolvent, and the value of its road and other property has been greatly depreciated. That they have been guilty of many and continued acts of maladministration, and that for the protection of the rights and interests of your orator and other creditors of said company a receiver should be ap-
135–9 pointed to take charge of and administer the affairs and property of said company pending this suit.

Your orator is informed and believes, and so charges the fact to be, that the said railroad company owes a large floating debt, and current and presently accruing indebtedness, and that there is great danger that suits will be instituted against said company, and judgment recovered against it under which its property may be seized and sold, and its business and the earning capacity and value of its line of railroad and other property greatly impaired and deteriorated.

And your orator shows unto your honor that no proceedings at law have been had, nor any suit or action commenced by or on behalf of your orator, or any holder of any of the bonds of the said company secured by the mortgage aforesaid for any interest unpaid or accrued thereon, or for any of said bonds except only this action.

In consideration whereof, and forasmuch as your orator is remediless in the premises at and by the strict rules of the common law and are only relievable in a court of equity, where matters of this kind are properly recognizable and relievable.

Your orator prays that the mortgage aforesaid may be decreed to be a lien and mortgage upon all of the property therein described, in favor of your orator and all other holders of the bonds aforesaid, and that the said railroad company may be decreed to pay unto your orator and the other bondholders under said mortgage all arrears of

interest now due or that may hereafter become due and payable on said bonds, together with all the costs and expenses in this behalf incurred and expended. And in default thereof that all and singular the said mortgaged premises and property described in said act of mortgage may be sold under a decree of this honorable court, and that the proceeds of sale be applied to the payment of the bonds and coupons so as aforesaid held by your orator and by other *bona fide* holders, without discrimination or preference.

And your orator further prays that an account may be
135–10 taken of the bonds secured by said mortgage and of the amount due on said bonds for principal and interest, and that the names of the lawful holders thereof be ascertained.

And your orator further prays that a receiver may be appointed according to the course and practice of this court, with the usual powers of receivers in like cases—of all the property, equitable interest, things in action, effects, moneys, receipts and earnings, rights, privileges, franchises and immunities of the said railway company, and of all other property included in and covered by the mortgage aforesaid, and that the defendant company be decreed to make such transfer or conveyance to such receiver, and to the purchasers of said property at any sale as aforesaid as may be necessary and proper to put them, or either of them, in possession and control of said property.

And your orator further prays, that a writ of injunction issue against defendant company, directing, commanding, enjoining and restraining said company, its directors, officers, agents, attorneys and employees from interfering with, transferring, selling or disposing of any of the property mentioned in or covered by the said mortgage, and that your orator may have such further or other relief in the premises as the nature of this cause may require, and to this honorable court shall seem meet.

And may it please your honor to grant unto your orator a subpœna of the United States issuing out of and under the seal of this honorable court, directing the said defendant company therein and thereby commanding them on a day certain and under a certain penalty to be and appear before this honorable court, then and there to answer—but not under oath—all and singular the premises and to stand to, perform and abide by such order, direction and decree as may be made against them in the premises, and as shall seem meet and agreeable to equity and good conscience.

And your orator as in duty bound will ever pray, etc.

A. H. LEONARD,
Solicitor for Complainant.
LEONARD & RANDOLPH,
Of Counsel for Complainant.

Personally appeared before me, the undersigned authority,
135–11 A. H. Leonard, who, being duly sworn, deposes and says: He is the solicitor of complainant, who is absent from the

said western district of Louisiana, and that he, deponent, has read the foregoing bill of complaint and knows the contents thereof, that the allegations thereof, except as stated to be on information and belief, are true, and that as to those stated to be on information and belief, he believes them to be true.

A. H. LEONARD.

Sworn to and subscribed before me on this the 31st day of March, 1900.

[SEAL.] J. B. BEATTIE, *Clerk.*

(Endorsed: No. 215. H. D. Hearms *vs.* Vicksburg, Shreveport & Pacific R. R. Co. Bill of complaint. Filed April 3rd, 1900 J. B. Beattie, clerk.)

EXHIBIT "A." Filed April 3, 1900.

HENRY D. HEARMS
vs.
VICKSBURG, SHREVEPORT & PACIFIC RY. CO. } No. 215.

This indenture, made the first day of January, one thousand eigh hundred and eighty-six, between the Vicksburg, Shreveport and Pacific Railroad Company, a corporation duly incorporated under and by virtue of the laws of the State of Louisiana, on the second day of December, one thousand eight hundred and seventy-nine, of the first part, and the Central Trust Company, of New York, a corporation duly incorporated under and by virtue of the laws of the State of New York, of the second part.

Whereas, at a meeting of the board of directors of the said party of the first part, duly held on the twenty-seventh day of November, one thousand eight hundred and eighty-five, it was, in substance, resolved, that it was for the best interest of the said railroad company to issue bonds to the amount of two million five hundred thousand dollars, to be known as third mortgage and land grant bonds, to be secured by mortgage of the said railroad company, which will be in effect a third mortgage on its railroad and appurtenances,
135–12 and a first mortgage on the lands granted to the said company; said bonds to be used to the extent of two million one hundred and one thousand five hundred dollars in discharge and cancellation of the outstanding income bonds of the said company, amounting to three million five hundred thousand dollars, whereby the liabilities of the said company will be reduced more than one million three hundred thousand dollars, and that the balance of the issue of said third mortgage and land grant bonds be applied towards the payment of the accrued interest coupons of the first $4,000,000 mortgage of the said railroad company, unless the same shall be otherwise provided for; and in that event the said balance

of the bonds will be used for other lawful purposes of the said railroad company.

And whereas, at a subsequent meeting of the said board of directors, duly held on the fourth day of May, one thousand eight hundred and eighty-six, this present indenture of mortgage and the form of bond therein described, were submitted to the said board for approval, and thereupon the following resolution was duly passed:

"Resolved, That this board approve of an indenture of mortgage, "now submitted to the board, between this company of the first "part, bearing date the first day of January, one thousand eight "hundred and eighty-six, being the third mortgage upon the rail- "road and appurtenances of this company, and a first mortgage on "the lands granted to this company, authorized to be issued by the "resolution of this board, of the twenty-seventh of November, one "thousand eight hundred and eighty-five, and this board also ap- "prove of the form, substance, terms and provisions of the said "mortgage in every respect, and of the form and substance of the "said bond, which bond is set out at length in the said mortgage.

"And further resolved, That this company duly make and exe- "cute, under its corporate seal, and that the president and secretary "of this company attest and duly acknowledge and deliver the said "mortgage and the said bonds therein referred to, and that the said "mortgage shall be duly passed by an act before a notary in and "for the parish of the domicil of this company in the State of "Louisiana, or before some other officer in the city of
135–13 "New York, duly authorized to pass the same, so as to "give validity and effect to the said mortgage, pursuant to "the laws of the State of Louisiana, and the said president and "secretary are hereby authorized and empowered, on passing such act, "to grant in favor of the said Central Trust Company, its successors "or assigns, as well as in favor of all and every person or persons "who may be, or may become the holder or holders of the said "bonds, aggregating two million five hundred thousand dollars, and "coupons thereto attached, or any of them, a mortgage lien and "privilege upon all and singular the railroad property, immunities, "franchises and lands mentioned and described in said mortgage as "being intended thereby to be mortgaged; and to bind said Vicks- "burg, Shreveport and Pacific Railroad Company not to alienate, "deteriorate, or in any manner encumber the said mortgaged prem- "ises to the prejudice of said mortgage, and also to do and make "any and every act, matter and thing necessary before such notary "or officer, to pass said act, and to give validity and effect to the "said mortgage, pursuant to the laws of the State of Louisiana, and "that the said mortgage be duly recorded in the proper parishes in "the State of Louisiana, and that the usual certificate of the Central "Trust Company of New York be required on the back of each of "said bonds before delivery."

Now this indenture witnesseth, that the party of the first part, in

consideration of the premises, and for the purpose of securing the payment of the said bonds, namely: two thousand five hundred bonds, of one thousand dollars each, gold coin of the United States of America, of the present coinage, aggregating two million five hundred thousand dollars, and the interest to accrue thereon, in like gold coin, and which bonds are hereinafter particularly described, and in consideration of the sum of one dollar, lawful money of the United States of America, paid to the party of the first part by the party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, released, confirmed, assigned, transferred and set over, and by these presents doth grant, bargain, sell, release, confirm, assign, transfer and set over to the said party of the second part, and its lawful successor in the trust hereby
135–14 created, all and singular said railroad of the party of the first part, constructed and hereafter to be constructed, and known as the Vicksburg, Shreveport and Pacific railroad (and formerly known as the Vicksburg, Shreveport and Texas railroad), and running from a point on the Mississippi river nearly opposite the city of Vicksburg, and near or at the town of Delta, in the State of Louisiana; thence westward through the northern part of Louisiana, by way of Monroe, on the Ouachita river; thence to Shreveport on the Red river; thence westward to the State line of Texas, and all and singular the immunities and franchises which have been or may hereafter be acquired by the party of the first part, and all rights of way, lands, property, water stations, warehouse buildings, machine shops, structures, terminal facilities which have been or may hereafter be erected thereon, and all and singular the cars, locomotives, engines, wagons, machinery, fixtures, utensils and effects of every nature and description whatsoever, in use or intended to be used upon the said railroad or in any way attached or appertaining to the same or which may hereafter be placed upon or become attached to the said railroad in any manner or for any purpose, without any exception or reservation, including all the lands in any way acquired by the party of the first part, either by purchase, donation or otherwise, for any purpose, whether for right of way or depot grounds, including all unsold lands which have been or which shall hereafter be acquired by or granted by land grants or otherwise to said party of the first part.

To have and to hold the same, with the appurtenances, unto the party of the second part, its successors, successor and assigns, in trust, for the benefit, use and security of several persons who shall be or become holders and owners of the said bonds to be secured hereby, and to be made and issued as aforesaid, subject, however, to the right of the party of the first part, its successors and assigns, to retain the free use, enjoyment, possession and management of the railroad premises hereby mortgaged, or intended so to be, and the earnings thereof, until by reason of default of the party of the first part in paying the interest or principal of said bonds, or
135–15 any of them, as hereinafter provided for, or in keeping and performing its covenants and engagements, or some of

them, herein contained, the party of the second part shall be authorized, as hereinafter provided, to enter upon and take possession of, or sell, the said railroad, lands and premises, as hereinafter set forth.

And the party of the first part, in consideration of the premises, and in consideration aforesaid, for itself, its successors and assigns, covenants and agrees to and with the said party of the second part, its successors, successor or assigns, and with all persons who may be, or may hereafter become, owners of the said bonds hereby secured, or of any of them, in manner following, that is to say:

First. The party of the first part will punctually pay to the holders of all of the said two million five hundred thousand dollars of bonds, intended to be secured hereby, interest thereon at the rates, respectively, per annum, provided for in the said bonds, in gold coin, as aforesaid, semi-annually, when the same shall become due and payable according to the terms of the said bonds, and of the coupons attached thereto, on the days and at the place, respectively, therein mentioned, and also fully pay the principal of the said bonds, in gold coin as aforesaid, at the maturity thereof, or whenever such principal shall sooner become due by reason of default in the payment of interest, as hereinafter provided, without deduction from either said principal or interest of any tax, levy or assessment hereafter imposed upon the said railroad or other mortgaged premises, by the United States of America or by the State of Louisiana, or by any parish in the said State of Louisiana.

Second. That if the party of the first part, its successor or assigns, shall at any time make default in the payment of any interest falling due on said bonds, or any of them, secured, or intended to be secured hereby, and such default shall continue for the space of three hundred and sixty-five days, that the principal of said bonds shall thereupon become due and payable, anything contained in said bonds, or herein contained, to the contrary notwithstanding, thereupon the said party of the second part, it successor or assigns, upon the written request of the holders of at least twenty per cent. of the then outstanding bonds so in default, shall, for the purpose
135–16 of enforcing payment of the principal and interest on said bonds, by themselves or their agents, take, and they are hereby authorized to take, actual possession of said railroad and premises hereby mortgaged, or intended so to be, and operate the same, and take the management and control of the said railroad and mortgaged premises and receive the earnings of the same until said mortgaged premises shall be sold as hereinafter provided.

Third. If, however, no continuing default shall have been made in the payment of interest, as hereinbefore provided, but default shall be made in the payment of the principal of said bonds, or any of them, as the same shall fall due, and such last mentioned default shall continue for the space of three hundred and sixty-five days, that thereupon the party of the second part, it successor or assigns, upon the written request of at least twenty per cent. of the then out-

standing bonds so in default, shall, for the purpose of enforcing the payment of the principal of said bonds, and any interest due or accruing thereon, by themselves, or agents, take, and they are hereby authorized to take, actual possession of said railroad and premises hereby mortgaged, or intended so to be, and operate the same and take the management and control of said railroad and mortgaged premises and receive the earnings of the same until the said mortgaged premises shall be sold, as hereinafter provided.

Fourth. In case of the continuing default for the space of three hundred and sixty-five days in the payment of the interest of said bonds hereby secured, or of any of them, as aforesaid, or in case of the continuing default for the space of three hundred and sixty-five days in the payment of the principal of said bonds, or any of them, as hereinbefore provided for, said party of the second part, its successor or assigns, upon the written request of the holders of at least twenty per cent. of the then outstanding bonds so in default by non-payment of interest or principal, as the case may be, shall, after entry as aforesaid, or other entry, or without entry, sell the said railroad and other mortgaged premises (except the said lands), including the said immunities and franchises as an entirety, and also sell the said lands, and all benefit
135–17 and equity of redemption of the party of the first part, its successors and assigns, of, in and to the said railroad and other mortgaged premises, lands, immunities and franchises, to the highest bidder or bidders, at public sale, in the city of New Orleans, first giving at least three months' notice of said intended sale, by publication, to be made twice in each week in at least two daily newspapers published in the city of New Orleans, also in one daily paper published in the city of Vicksburg, Mississippi, and also in two daily papers published in London, England, and convey the same to the purchasers or purchaser thereof, and execute and deliver to the purchasers and purchaser thereof proper deeds or deed to convey to them or him full, valid and indefeasible title to the said railroad and other mortgaged premises, including the said immunities and franchises, and including the said lands, which sale and conveyance shall be a perpetual bar, in law and equity, to any claim or demand thereto, or to any part thereof, by said party of the first part, its successors or assigns, or by any person claiming or to claim under said party of the first part; or the said party of the second part, its successor or assigns, if so required by the last mentioned written request, or other written request of said holders of at least 20 per cent. of the then outstanding bonds so in default, as aforesaid, instead of selling said railroad in manner aforesaid, the party of the second part shall proceed to foreclose, and shall foreclose, this mortgage in any court having jurisdiction in the premises, and have said railroad, mortgaged premises, immunities and franchises as an entirety, and also the said lands, and all benefit and equity of redemption, as aforesaid, sold by decree of such court, and in such manner as is provided by law, and that such sale shall be a

perpetual bar, in law and equity, against the party of the first part, its successors and assigns, and against all other persons claiming, or to claim, through or under said party of the first part, its successors and assigns, in respect to said railroad, mortgaged premises, immunities, franchises, lands, and every part thereof.

Fifth. That on any sale of the mortgaged premises, as hereinbefore provided, or on any judicial sale thereof, the party of
135–18 the second part or its successor, may, upon the written request of the holders of any of the said bonds secured hereby, bid for, and purchase, the mortgaged premises, or any part thereof, on behalf of such holders.

Sixth. If possession should be taken of the said railroad and mortgaged premises, and said lands, as hereinbefore provided, or of any part thereof, the proper expenses of taking, holding, managing, and operating the said railroad and mortgaged premises and holding and managing said lands so taken possession of, including any expenses of repairs to the same, or selling said lands, shall be defrayed from the earnings or proceeds thereof, and if the earnings be insufficient for that purpose, the deficiency shall be taken from the proceeds of sale of the said railroad and mortgaged premises and said lands. All net earnings of said railroad and mortgaged premises, and rents and proceeds of said lands, while so in possession of said party of the second part, or its successor as well as the proceeds of sale of the said railroad and mortgaged premises, and of said lands, or so much thereof as may remain, as aforesaid, shall, after payment thereout of all taxes then of said railroad, mortgaged premises and lands (unless the same shall be sold subject to such taxes, if any there be), and the payment of all just and proper expenses in the premises to the party of the second part, or its successor, together with a proper compensation for the services of the party of the second part, or its successor, shall be applied, in the first place, to the payment of all interest in arrear on all of said bonds then outstanding, if sufficient for that purpose, and if not sufficient, then *pro rata;* and in the second place, after payment of such interest in arrear, to the payment of the principal of all of the said bonds outstanding in full, if sufficient for that purpose, and if not sufficient, then *pro rata;* and after the payment in full of all the said outstanding bonds and principal and interest, then pay the surplus, if any there shall be, to the party of the first part, its successors or assigns.

Seventh. The said bonds to be issued under and by virtue of this mortgage, or deed of trust, and to be secured hereby, shall be bonds of the denomination of one thousand dollars each, and of the tenor and effect following:

135-19 "Gold 1000 dollars. Gold 1000 dollars.

UNITED STATES OF AMERICA,
State of Louisiana.

Third Mortgage and Land Grant Bond.

Vicksburg, Shreveport and Pacific Railroad Company.

"The Vicksburg, Shreveport and Pacific Railroad Company ac-
"knowledges itself indebted to the bearer in the sum of one thou-
"sand dollars, gold coin of the United States of America, of the
"present coinage, which the said company promises to pay, at its
"agency in the city of New York, on the first day of January, in
"the year one thousand nine hundred and sixteen, with interest
"thereon, in like gold coin, at the rates of interest hereinafter pro-
"vided, interest not to commence until the first day of January, one
"thousand eight hundred and eighty-eight, payable semi-annually
"thereafter, at the said agency, on the first days of July and January
"in each and every year, on presentation and surrender of the
"annexed coupons when they severally become due. No interest
"for the first two years; interest for the next three years at the rate
"of three per cent. per annum, payable semi-annually; for the fol-
"lowing three years, interest at the rate of four per cent. per annum,
"payable semi-annually, and thereafter at the rate of five per cent.
"per annum, payable semi-annually.

"This bond is one of a series of bonds of even date, tenor and
"amount herewith, amounting in the aggregate to two millions five
"hundred thousand dollars, issued by authority of the board of
"directors of the Vicksburg, Shreveport and Pacific Railroad Com-
"pany, in accordance with its charter and the laws of Louisiana,
"the payment whereof is secured by a third mortgage and privilege
"on the railroad of said company, from the Mississipoi river in
"Madison parish, westward through the parishes of Ouachita and
"Caddo, to the State line of Texas, its real and personal property
"and franchises, and being a first mortgage lien and privilege on
"the land-grant lands of the said company, executed in favor of the
"Central Trust Company, of New York, trustee and mortgagee, and
"of even date herewith.

135-20 "The principal and interest of this bond are payable
"without deduction for taxes.

"This bond shall not be obligatory upon the company until the
"certificate endorsed hereon is signed by the trustee.

"This bond shall pass by delivery unless registered on the books
"of the company, but after registration of ownership, duly certified
"hereon, no transfer, except upon the books of the company, shall
"be valid unless the last registration shall have been to bearer, and

"this bond shall continue subject to successive registrations and "transfers to bearer, at the option of the holder.

"In witness whereof, the said railroad company has caused its "common seal, and the signature of its president and secretary to "be affixed this first day of January, one thousand eight hundred "and eighty-six.

"VICKSBURG, SHREVEPORT AND
PACIFIC RAILROAD COMPANY,
[L. S.] "By FRANK S. BOND, *President.*

"DIEDRICH GRAFF, *Secretary.*"

To each bond are to be attached the usual coupons for the payment of semi-annual interest in gold coin, as aforesaid, during each and every year after the first of January, one thousand eight hundred and eighty-eight, of the running of said bonds, payable in New York.

Said bonds to be numbered from one to two thousand five hundred, both inclusive.

Eighth. It is mutually agreed and understood between the party of the first part and the holders of the said bonds, that the proceeds of land sales embraced in said land grants, less the expenses of such sale, shall be applied:

First. To the payment of coupons attached to said bonds, in the order of their maturity.

Second. To the creation of the sinking fund for the redemption of the said bonds, the party of the first part to have the right of sales, from time to time, of the said lands free from the lien of this mortgage, upon payment to the trustee herein of the proceeds as received, and which proceeds shall, without delay, be paid into said sinking fund as received.

135-21 And it is mutually agreed, between the parties hereto, that as often as the sinking fund shall amount to five thousand dollars, or upwards, the trustee shall advertise for bids for sale to him of bonds secured hereby, and that the money in the sinking fund shall be applied, so far as it will go, to the purchase of such bonds from the lowest bidder; such advertisement shall be inserted once a week, for at least three weeks, in a newspaper published in the city of New York.

Ninth. The party of the first part agrees with the holders of said bonds secured hereby that it will, on or before the second Wednesday of September, in each and every year, until all of said lands shall

be sold, fix a price at which bonds secured hereby may, at the option of the holder, be used instead of cash in the purchase of such lands, and on such use of any of said bonds, the same are to be surrendered to the trustee hereunder, to be canceled. In case the purchase amount shall not exhaust the value of any bond so used, at the price so fixed therefor, then the party of the first part will give to the holder a certificate for the residue of the amount of such bond at said fixed price, and to bear interest at the same rates as the bond, to be used at par of such certificate, and interest, in any further purchase of lands. And said party of the first part further agrees that it will, on or before the last mentioned day, in each and every said year, give notice, by mail, to the registered owners of said bonds, addressed to their respective residences as appearing on such registry, of the price so fixed, as aforesaid.

Tenth. It is expressly agreed and understood, between the parties hereto, that in case foreclosure proceedings shall be instituted for the foreclosure of this mortgage or trust deed, or in case a receiver shall be appointed in such proceedings, that no certificates or other evidences of debt or creation of liability shall be authorized by the court, or be issued by such receiver, or otherwise issued, so as to create or become a preference or lien upon the said railroad or mortgaged premises or lands, or any part thereof, or on the proceeds of sale thereof, or any part thereof, or to be paid out of the
135–22 proceeds of sale thereof, prior to the payments of interest and principal in full on all of the said bonds then outstanding.

Eleventh. It is expressly agreed and understood between the parties hereto, that the party of the second part, its successors or successor, shall not be responsible, except for its own act or actual negligence, and shall not be accountable for the acts of any agent, when such is necessarily employed, who is not an officer or regular employé of the said party of the second part, its successors or successor.

Twelfth. The party of the second part hereby accepts the trusts hereby reposed in it, and signifies its accept nce by its corporate seal hereto attached, and attested by the signature of its president.

In witness whereof, the said party of the first part, the Vicksburg, Shreveport and Pacific Railroad Company, has caused its corporate seal to be hereto affixed, and the same to be attested by its president and secretary, and the party of the second part, the Central Trust Company of New York, to signify its acceptance of the trusts hereby reposed in it, has hereunto set its corporate seal, and has

caused the same to be attested by its president this fourth day of May, one thousand eight hundred and eighty-six.

VICKSBURG, SHREVEPORT & PACIFIC
RAILROAD COMPANY,
By FRANK S. BOND, *President.*
DIEDRICH GRAFF, *Secretary.*

[Seal of V., S. & P. R. R. Co.]

In presence of
EDWIN F. COREY.

G. B. OWEN,
H. FINCK,
As to Frank S. Bond, and Diedrich Graff.

CENTRAL TRUST CO. OF NEW YORK,
By F. P. OLCOTT, *President.*

[Seal of Central Trust Co.]

Attest:
C. H. P. BABCOCK, *Secretary,*

H. E. MALIN,
M. FERGUSON.
As to F. P. Olcott, and C. H. P. Babcock.

STATE OF NEW YORK, } ss:
City and County of New York, }

And now be it known, in order the further to secure and
135–23 protect the mortgage, trustee and holders of the bonds described in the foregoing instrument, or mortgage, in accordance with the laws of the State of Louisiana, where the property described and set forth in said instrument is situate, and where the Vicksburg, Shreveport & Pacific Railroad Company, the mortgagor, is domiciled, and for the purpose of properly executing said instrument, or mortgage, with the covenants therein, this day, before me, a commissioner for the State of Louisiana, resident of the city of New York, duly commissioned and qualified by the executive authority of, and under the laws of the State of Louisiana, to take acknowledgments and proofs of deeds or other conveyances, to be used or recorded in the State of Louisiana, and duly sworn, personally came and appeared Frank S. Bond, personally known to me and known to me to be the president of said Vicksburg, Shreveport & Pacific Railroad Company, and Diedrich Graff, also personally known to me, and known to me to be the secretary of the said last mentioned company, a corporation duly incorporated by and under the laws of the State of Louisiana, and being a corporation of the

said State of Louisiana, and herein acting in their said respective capacities, by virtue and in pursuance of the resolutions of the board of directors of the said Vicksburg, Shreveport & Pacific Railroad Company, and also by the authority conferred upon the said company by its charter, and act of incorporation and acts amendatory thereof, specially authorizing the same, severally declared, that they have this day executed, under the corporate seal of said company, two thousand five hundred bonds, secured by a third mortgage and privilege on the railroad of the said railroad company, its real and personal property and franchises, and being a first mortgage lien and privilege on its land grant lands, numbered from *one* to *twenty-five hundred*, both inclusive, bearing date the first day of January, one thousand eight hundred and eighty-six, for the sum of one thousand dollars each, aggregating two million five hundred thousand dollars, payable in gold coin of the United States of America of the present coinage, on the first day of January, A. D. one thousand nine hundred and sixteen, with interest thereon in like gold coin, at the rates of interest as follows: Interest not to com-
135–24 mence until the first day of January, one thousand eight hundred and eighty-eight, and payable semi-annually thereafter at the agency of the said railroad company, in the city of New York, on the first days of July and January in each and every year, namely: No interest for the first two years; interest for the next three years at the rate of three per cent. per annum, payable semi-annually; for the following three years, interest at the rate of four per cent. per annum, payable semi-annually, and thereafter at the rate of five per cent. per annum, payable semi-annually, as more fully described in said instrument of mortgage.

And also, in consideration of the premises, and by virtue and further pursuance of the several authorizations hereinbefore stated, and in order to secure the full, faithful and effectual payment and redemption of each and all of said bonds, and their coupons thereto attached, to any and all future holder or holders thereof, and to each and every of them, when the same shall become due and payable, the said Vicksburg, Shreveport and Pacific Railroad Company does by these presents, by its said president, the said Frank S. Bond, and by its said secretary, the said Diedrich Graff, grant in favor of the Central Trust Company, its successors, successor or assigns, as well as in favor of all and every person or persons who may be or may become the holder or holders of said bonds, coupons, or any of them, a mortgage lien and privilege upon all and singular the railroad property, immunities, franchises and lands and land grant lands, mentioned and described in the said instrument as being intended thereby to be mortgaged; and bind said Vicksburg, Shreveport and Pacific Railroad Company not to alienate, deteriorate, or in any manner encumber the said mortgaged premises to the prejudice of this mortgage.

And also came the said Frank S. Bond, president, and the said Diedrich Graff, secretary of the last mentioned company, who are

personally known to me and known to me to be the identical persons who signed the foregoing instrument of mortgage, and also known to me to be such president and such secretary of the said Vicksburg, Shreveport and Pacific Railroad Company, the
135–25 party of the first part in the foregoing instrument or mortgage, and the said Frank S. Bond did say and acknowledge that he resides in the city of New York; that he is president of the said Vicksburg, Shreveport and Pacific Railroad Company, and the said Diedrich Graff did say and acknowledge that he resides in the city of Brooklyn, county of Kings, and State of New York, that he is secretary of the last mentioned company; and they both did say and acknowledge that they know the corporate seal of the said last mentioned company; that the seal affixed to the foregoing instrument is such corporate seal, and was affixed thereto by authority of the said last mentioned company, and that they signed their names to the said instrument or mortgage respectively as president and secretary of the said last mentioned company, and in behalf thereof, and by its authority, and they then and there acknowledged that they had signed, sealed and delivered the said instrument as their respective official act and deed of the last mentioned company, and for the issues and purposes therein expressed, and on the day and year herein mentioned.

And at the same time and place, before me personally came and appeared Frederick P. Olcott, who is personally known to me, and also known to me to be the president of the Central Trust Company, the mortgagee or trustee and party of the second part, in the said instrument, a corporation duly incorporated by and under the laws of the State of New York, and herein acting in his said capacity of president by authority of the last mentioned corporation, and known to me to be the identical person who signed the foregoing instrument, who thereupon did declare, say and acknowledge, that he resides in the city of New York, and State of New York, that he is the president of the said Central Trust Company, and that he knows the corporate seal of the said last mentioned company; that the seal affixed to the foregoing instrument is such corporate seal, and was affixed thereto by authority of the last mentioned corporation, and that he signed his name to said instrument as president of the said last mentioned company, and in behalf thereof, and he then and there acknowledged that he had signed, sealed and
135–26 delivered the said instrument as his official act and deed of the last mentioned company, for the uses and purposes therein expressed, on the day and year herein mentioned.

In witness whereof, I have hereunto set my hand and affixed my official seal, this twenty-first day of June, one thousand eight hundred and eighty-six.

Seal of Edwin F. Corey, Commissioner for Louisiana.

EDWIN F. COREY,
Commissioner for the State of Louisiana,
Residing in New York.

(Endorsed: Exhibit "A." Dated January 1st, 1886. The Vicksburg, Shreveport and Pacific Railroad Company to the Central Trust Company. Third mortgage on railroad and first mortgage on land grant lands. Martin & Smith, counsellors-at-law, 50 Wall St., New York. Henry D. Hearms *vs.* Vicksburg, Shreveport & P. Ry. Co. Filed April 3d, 1900. J. B. Beattie, clerk.)

Order.

Circuit Court United States, Fifth Circuit, Western District of Louisiana. In Equity.

H. D. HEARMS
vs.
THE VICKSBURG, SHREVEPORT & PACIFIC RAILROAD CO. } No. 215.

Now, on this 2nd day of April, 1900, comes the complainant, by counsel, and having filed his bill of complaint and exhibits, moves thereon for the appointment of a receiver of the property of defendant and for an injunction against defendant.

And thereupon it is ordered that the further hearing be postponed until the first Monday of May, 1900, at Shreveport, 10 o'clock a. m., with the right to all parties to be then heard on the merits of the application without any prejudice by reason of this order; and that in the meantime the defendants be restrained from selling or disposing of any of their lands—and restrained also from making any change in the present status of the said railway, other
135–27 than may be necessary in the proper operation of said railway as heretofore.

ALECK BOARMAN, *Judge.*

(Endorsed: No. 215. H. D. Hearms *vs.* V., S. & P. R. R. Co. Order. Filed April 3d, 1900. J. B. Beattie, clerk.)

Marshal's Return.

Received, April 4, 1900, a duly certified copy of the within order and on the same day served same on the defendant, by handing same personally to F. P. Stubbs, attorney and agent of the defendant, in the city of Monroe, Ouachita parish, Louisiana.

LEMUEL GUSTINE,
U. S. Marshal.

(Filed April 4th, 1900.

J. B. BEATTIE, *Clerk.*)

Subpœna in Chancery.

UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit, Western District of Louisiana.

H. D. HEARMS
vs.
THE VICKSBURG, SHREVEPORT & PACIFIC R. R. Co. } No. 215.

To The President of the United States to the marshal for the western district of Louisiana, Greeting:

You are hereby commanded to summon the Vicksburg, Shreveport and Pacific Railroad Company, Monroe, Ouachita parish, Louisiana, through Honorable F. P. Stubbs, general agent and attorney for said Vicksburg, Shreveport and Pacific Railroad Company at Monroe, Ouachita parish, Louisiana, to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden at the city of Monroe, Louisiana, on the first Monday of May, A. D. 1900, then and there to answer a bill in chancery filed against the Vicksburg, Shreveport and Pacific R. R. Co., wherein Henry Denhart Hearms, a citizen of the State of Illinois, is complainant, and said The Vicksburg, Shreveport and Pacific Railroad Company is defendant.

Herein fail not, and have you then and there this writ, 135–28 with your endorsements thereon how you have executed the same.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at the [SEAL.] city of Shreveport, Louisiana, this 7th day of April, in the year of our Lord one thousand nine hundred, and the 124th year of American Independence.

J. B. BEATTIE, *Clerk.*

The defendant is hereby notified that it is required to enter its appearance in the clerk's office of the United States circuit court at Monroe, Louisiana, on or before the first Monday of May, A. D. 1900, otherwise the bill may be taken *pro confesso.*

J. B. BEATTIE, *Clerk.*

(Endorsed: Original. United States circuit court, fifth circuit, western district of Louisiana. No. 215. H. D. Hearms *vs.* The Vicksburg, Shreveport and Pacific Railroad Company. Subpœna in chancery.)

Marshal's Return.

Received in the office at Monroe, La., on the 9th day of April, 1900, and on same day, month and year I made personal service by leaving a certified copy of within subpœna in chancery in the hands of Mr. F. P. Stubbs, general agent and attorney for said Vicksburg, Shreveport & Pacific Railroad Company at Monroe, Ouachita parish, Louisiana.

W. C. FARRINGTON,
Deputy Marshal.

(Filed April 10th, 1900.

J. B. BEATTIE, *Clerk.*)

Extract from Order Book.

SHREVEPORT, LOUISIANA, MONDAY, *April* 9, 1900.

HENRY D. HEARMS
vs.
THE VICKSBURG, SHREVEPORT & PACIFIC R. R. Co. } No. 215.

Now, on this day comes the defendant, through its solic-
135–29 itors, Mr. Harry H. Hall and Mr. F. P. Stubbs, and enters its appearance to the bill of complaint filed herein.

J. B. BEATTIE, *Clerk.*

Bill of Foreclosure.

Filed April 23, 1900.

In the Circuit Court of the United States, Fifth Circuit and Western District of Louisiana, Monroe Division. In Equity.

FARMERS LOAN AND TRUST CO.
vs.
VICKSBURG, SHREVEPORT & PACIFIC R. R. Co. } No. 216.

To the honorable the judges of the circuit court of the United States for the fifth circuit and western district of Louisiana, Monroe division:

The Farmers Loan and Trust Company, a corporation created by and existing under the laws of the State of New York, brings this its bill of complaint against the Vicksburg, Shreveport & Pacific Railroad Company, a corporation created and existing under and by virtue of the laws of the State of Louisiana.

1. And thereupon, your orator complains and says that the Farmers Loan & Trust Company, is a *corporation* created by and existing under the laws of the State of New York, and having its principal office for the transaction of its business in the city of New York, in the State of New York, and is a *citizen of the said State of New York*, within the meaning of the laws fixing and determining the jurisdiction of this honorable court.

2. And your orator further shows, upon its information and belief that, on the first day of July, 1881, and long prior thereto, there existed a railroad corporation known as the Vicksburg, Shreveport & Pacific Railroad Company, which was created a body corporate by and existing under and by virtue of the laws of the State of Louisiana, and possessed of and endowed with powers, rights, privileges, franchises and immunities granted by the laws of said State, and also by certain acts of Congress of the United States and a *citizen of the said State* of Louisiana, within the meaning of the laws fixing and determining the jurisdiction of this honorable court.

135-30 3. That said Vicksburg, Shreveport & Pacific Railroad Company, on July 1st, 1881, and long prior thereto, *owned and operated a line of railway* situated in the State of Louisiana and running from a point on the Mississippi river, nearly opposite the city of Vicksburg and near or at the town of Delta, in the State of Louisiana; thence westward through the northern part of Louisiana by way of Monroe, on the Ouachita river; thence to Shreveport on the Red river; thence, westward, to the State line of Texas.

4. And your orator further shows to your honors, that, theretofore and on or about the 1st day of July, 1881, the said Vicksburg, Shreveport & Pacific Railroad Company, being thereunto duly authorized, by its president and secretary and under its private seal, *made and executed its 4000 bonds of one thousand dollars each*, known as first mortgage 6% gold bonds, numbered consecutively from 1 to 4000, both numbers inclusive, each for the sum of $1,000.00, bearing date July 1st, 1881, by the terms of which bonds the said company promises to pay to the holder of each bond, or in case the same should be registered, then, to the registered owner thereof, unless the last registration should have been to bearer thereof, the sum of one thousand dollars, gold coin of the United States of America, of the present coinage, at said company's agency in the city of New York, on the first day of January, 1920, with *interest* thereon in gold, at the rate of 6% per annum, *payable semi-annually*, at the place aforesaid, on the *first days of January and July*, in each and every year, on the presentation and surrender of their annexed coupons, as they severally became due.

5. And your orator further shows unto your honors that, on or about said first day of July, 1881, the said Vicksburg, Shreveport & Pacific Railroad Company, being the owner of, and being in possession of the line of railway and property therein described, did,

in order to secure the payment of the principal and interest of said issue of first mortgage 6% gold bonds, as the same should mature, make, execute and deliver to your orator, a certain deed or indenture of trust or mortgage known as its first mortgage, whereby it conveyed to your orator, as trustee, and its lawful successor
135–31 or successors in said trust, the following described property, to-wit:

"All and singular said railroad of the party of the first part constructed and hereinafter to be constructed, and known as the Vicksburg, Shreveport and Pacific railroad (and formerly known as the Vicksburg, Shreveport and Texas railroad), and running from a point on the Mississippi river nearly opposite the city of Vicksburg, and near or at the town of Delta, in the State of Louisiana; thence, westward, through the northern part of Louisiana, by way of Monroe, on the Ouachita river; thence to Shreveport on the Red river; thence, westward, to the State line of Texas; and all and singular the immunities and franchises which have been, or may hereafter be acquired by said railroad company, and all rights of way, lands, property, water-stations, warehouse buildings, machine shops, structures, and improvements which have been or may hereafter be erected thereon, and all and singular the cars, locomotives, engines, wagons, machinery, fixtures, utensils and effects, of every nature and description whatsoever in use, or intended to be used upon the said railroad, or in any way attached or appertaining to the same, or which may hereafter be placed upon, or may become attached to the said railroad in any manner or for any purpose without any exception or reservation, including all the lands in any way acquired by said railroad company, either by purchase, donation or otherwise, for any purpose, whether for right of way or depot grounds, but excluding from the operation of this mortgage all unsold lands which have been or which shall hereafter be acquired by said railroad company as aforesaid, not now used, or hereafter to be used, for right of way, depot grounds, or other railroad purposes of the said railroad company, as aforesaid."

And your orator further shows to your honors, that a true and correct copy of said first mortgage is annexed to this petition of intervention and bill of complaint, and marked "Exhibit A," and your orator prays that the same may be taken as a part of this bill, as fully as if embodied herein.

6. And your orator further shows that in order to *secure the*
135–32 full and effectual payment and redemption of each and all of said bonds and the coupons thereto attached, to any and all future holder or holders thereof, and to each and every one of them, when the same should become due and payable, the said railroad company in pursuance of the several authorizations hereinbefore stated, granted in favor of your orator, its successor or assigns, as well as in favor of all and every person or persons, who may be or become the holder or holders of the said bonds and coupons or any of them, a *mortgage and lien and privilege* upon all and singular the

railroad property, immunities and franchises mentioned and described in the said instrument as being intended thereby to be mortgaged.

7. And your orator further shows that the execution of said first mortgage to secure the payment of said issue of bonds, was duly *authorized by the board of directors* of the said railroad company, at a meeting of June 8th, 1881; and said indenture of mortgage was duly ratified and approved at a meeting of the board of directors of said railroad company, on the 10th of August, 1881.

That said first mortgage was duly *executed, acknowledged* and *recorded* as required by law.

8. And your orator further shows unto your honors that it was provided and covenanted in and by said first mortgage, that of the bonds authorized to be issued as aforesaid and when issued to be secured by the provisions of said mortgage, none of said bonds should be obligatory upon said railroad company, until the certificate endorsed thereon should be signed by said trustee.

And your orator further shows unto your honors that by virtue of the covenants and provisions of said first mortgage and under the authority therein granted said *railroad company* has *made, issued, executed and delivered, and your orator as trustee* under said mortgage has *certified and delivered bonds* numbered from one to four thousand, both numbers inclusive, amounting in the aggregate to $4,000,000.00, all of which are now actually outstanding in the hands of *bona fide* holders thereof.

And your orator shows that of said $4,000,000 of said first mortgage bonds, *$3,692,000* thereof are held and owned and duly registered in the name of the *Alabama, New Orleans, Texas &*
135–33 *Pacific Junction Railways Company, Ltd.*, said bonds so owned, held and registered, being numbered *1* to *802*, inclusive and *1111* to *4000* inclusive.

And your orator further shows unto your honors that the remaining $308,000.00 of said first mortgage bonds are held and registered in the names of sundry persons other than said Alabama, New Orleans, Texas & Pacific Junction Railways Company, Ltd.

9. And your orator further shows unto your honors, that, on said $308,000.00 bonds of said mortgage, the interest has been punctually paid, semi-annually and in conformity with the terms of said mortgage; but that no *interest* whatever, and none of the coupons have been paid on said $3,192,000.00 of said first mortgage bonds, since *January 1st, 1890*, when there was paid on coupon No. 17, then maturing, the sum of $5,762.48, leaving due and unpaid on said coupon $104,997.52.

And your orator further shows unto your honors that, on the 1st day of January, 1891, and the first day of July, 1890, and of each and every year succeeding up to the present time, there *became due* and payable and accruing upon said $3,692,000.00 of said first mortgage bonds actually outstanding as aforesaid, the semi-annual instalments of *interest*, evidenced by the coupons attached to said bonds, and now aggregating the sum of *$2,320,197.52*.

That *default* was made in the payment of the said interest on said bonds and on said instalments accruing on said bonds, as aforesaid.

That said Vicksburg, Shreveport & Pacific Railroad Company wholly failed, omitted and refused to pay the said instalments of *interest* and to pay the interest mentioned and provided for in the said coupons due as above, or upon any of them, but therein wholly made default, and that notwithstanding the large amount of interest has become due as aforesaid, semi-annually, since January 1st, 1882, no instalment and no part thereof has, in spite of due demand, ever been paid to any of the holders of said $3,692,000.00 bonds aforesaid.

135–34 10. And your orator further shows unto your honors that it is provided in *first mortgage* that if said railroad company should, at any time, make *default* in the payment of any interest falling due on said bonds, or any of them, secured or intended to be secured thereby, and such default should continue for the space of *180 days*, that the *principal* of said bonds should thereupon become *due* and payable, anything contained in the said bonds or in the said first mortgage to the contrary notwithstanding; and,

That thereupon, your orator, upon the *written request* of the holders of at least one hundred of said bonds, so in default, should foreclose said mortgage in any court having jurisdiction in the premises, and have said railroad, mortgaged premises, immunities and franchises, and all benefit and equity of redemption, as aforesaid, sold by decree of such court and in such manner as is provided by law.

And your orator further shows unto your honors that the holders of *$3,692,000.00* of said first mortgage bonds now actually outstanding *have in writing, requested your orator to enforce* the remedies provided in said mortgage or deed of trust.

11. And your orator further shows unto your honors that it is informed and believes that said *railroad company* is *insolvent* and unable to pay its indebtedness, and that said mortgaged property is insufficient and inadequate security for the payment of the outstanding bonds secured by said first mortgage, after providing for the payment of liens prior thereto and the preferred claims.

And your orator further shows unto your honors that a suit has been instituted against said *railroad company* by the holders of some *sixty-four* (*64*) of the third mortgage bonds of the said railroad company, and that there is great danger that a judgment may be recovered against said railroad company and that the property of said railroad company may be sold under said judgment so to be recovered, as aforesaid, and that the property as well as the earning capacity of said railroad will be destroyed or greatly impaired by the contest of creditors having conflicting claims.

12. And your orator further shows unto your honors that no proceedings at law have been had, nor any suit nor action
135–35 commenced by or on behalf of your orator or any holder of any of the bonds of the said company, secured by the mortgage aforesaid, except only this action.

In consideration whereof, and for as much as your orator is remediless in the premises, to and by the strict rules of the common law, and is only relievable in a court of equity where matters of this kind are properly recognizable and relievable.

Your orator therefore prays the aid of this honorable court, and that the said mortgage or deed of trust may be decreed to be a *lien* upon all of the property, real, personal or mixed, rights, franchises, lands, land grants, titles and railroad of the said Vicksburg, Shreveport & Pacific Railroad Company, described in the said mortgage or deed of trust, within the jurisdiction of this honorable court, and that said Vicksburg, Shreveport & Pacific Railroad Company may be *decreed to pay* unto your orator and to the other bondholders under the aforesaid mortgage or deed of trust, all arrears of interest now due, or that may hereafter become due or payable upon the said bonds, together with all the costs and expenses in this behalf incurred and expended; and, in default thereof, that the said defendant above named and all persons claiming under it, may be forever barred and foreclosed of and from all equity of redemption and claim of, in and to the said mortgaged premises and every part and parcel thereof, and that all and singular the said mortgaged premises, within the jurisdiction of this honorable court, with the appurtenances, property and effects, rights, immunities and franchises in the said mortgage mentioned, may be sold under a decree of this honorable court, and that out of the money arising from the sale thereof, after deducting from the proceeds of any such sale just allowance for all disbursements and expenses of the said sale, including attorney and counsel fees, and the reasonable charges of your orator for services rendered as trustee, and for all expenses incurred by it in the premises, and all payments which may be properly made by it, to apply the said proceeds:

1st. To the *payment* of the said *accrued interest* and interest coupons.

2d. To the *payment* of the *principal* of said bonds without
135–36 discrimination or preference, ratably to the aggregate amount of said unpaid principal.

And your orator further prays that an *account* may be taken of the bonds secured by said first mortgage and of the amount due on said bonds for principal and interest or either, so that the names of the lawful holders thereof may be ascertained.

And your orator further prays that a *receiver* may be appointed, according to the course and practice of this court, with the usual powers of receivers in like cases, of all the property, equitable interest, things in action, effects, moneys, receipts and earnings, rights, privileges, franchises and inventories of the said railroad company, and of all property included and covered by the said mortgage within the jurisdiction of this honorable court, and that the defendant be decreed to make such transfer or conveyances to such receiver and to the purchasers of said property at any sale, as afore-

said, as may be necessary and proper to put them, or either of them, in possession and control of said property.

And your orator further prays that a writ of *injunction* issue out of and under the seal of this honorable court, or issue by one of your honors, according to the form of the statute in such case made and provided, directing, comman ling, enjoining and restraining the said defendant from interfering with, transferring, selling and disposing of any of the property mentioned in and covered by the said mortgage, or from taking possesson of, levying upon or attempting to sell, either by judicial process or otherwise, any portion of the property embraced in or covered by the said mortgage; and that your orator may have such further or other relief in the premises as the nature of the circumstances of this case may require and to this honorable court shall seem meet.

And may it please your honors to grant unto your orator, a *subpœna* of the United States of America, directed to The Vicksburg, Shreveport & Pacific Railroad Company, defendant therein, and thereby commanding it on a day certain therein to be named, and under a certain penalty, to be and appear before this honorable court, then and there to answer (but not under oath), all
135–37 and singular the premises and to stand to, perform and abide by the said order, direction and decree as may be made against them in the premises, and shall seem meet and agreeable to equity and good conscience; and your orator as in duty bound, will ever pray, etc., etc.

TURNER, McCLURE & RALSTON,
By HARRY H. HALL,
Solicitors for Complainant.

HARRY H. HALL, *Of Counsel.*

UNITED STATES OF AMERICA, }
District of Louisiana. }

Harry H. Hall, being duly sworn, says that he is one of the solicitors and of counsel for The Farmers' Loan & Trust Company, the complainant in the foregoing bill of complaint, and knows the contents thereof; that the allegations therein contained, as far as they relate to his own acts, are true, and that as far as they relate to the acts of others, he believes them to be true. That in regard to all matters and things in the foregoing bill of complaint alleged, which are not within the personal knowledge of this deponent, the deponent has been fully informed and believes them to be true.

HARRY H. HALL.

Sworn to and subscribed to before me this 21 day of April, 1900.

[L. S.]

H. J. CARTER,
U. S. Commissioner.

(Endorsed: No. 216. U. S. circuit court, 5th circuit, western district of Louisiana, Monroe division. Equity. Farmers' Loan & Trust Co., trustee, *vs.* Vicksburg, Shreveport & Pacific Railroad Co. Bill of foreclosure. Filed April 23, 1900. W. A. O'Kelly, d'y clerk. Turner, McClure & Ralston, sols. Harry H. Hall, of counsel.)

EXHIBIT "A."

This indenture, made the first day of July, one thousand
135–38 eight hundred and eighty-one, between the Vicksburg, Shreveport and Pacific Railroad Company, a corporation duly incorporated under and by virtue of the laws of the State of Louisiana, on the second day of December, one thousand eight hundred and seventy-nine, of the first part, and the Farmers Loan and Trust Company, of the city of New York, a corporation duly incorporated under and by virtue of the laws of the State of New York, of the second part.

Whereas, at a meeting of the board of directors of the said party of the first part, duly held on the eighth day of June, one thousand eight hundred and eighty-one, the said directors, then present, being the owners of the entire capital stock of said party of the first part, the following resolution was duly passed, to-wit:

"*Resolved*, That this company duly make and execute, under its "corporate seal, and deliver, as hereinafter mentioned, four thou- "sand first mortgage bonds, of one thousand dollars each, gold coin "of the United States of America, of the present coinage, aggregat- "ing four millions of dollars, payable on the first day of January, "A. D. one thousand nine hundred and twenty, with interest thereon, "at the rate of six per cent. per annum, in like gold coin, payable "semi-annually, on the first days of January and July in each and "every year, and containing a provision that in case of default, for "the term of one hundred and eighty days, in the payment of any of "said interest, that the principal shall thereupon become due and "payable, anything contained in said bonds to the contrary not- "withstanding; and that this company, in order to secure the pay- "ment of said bonds, duly make and execute, under its corporate "seal, and duly acknowledge and deliver, as hereinafter provided, "to the Farmers Loan and Trust Company, as mortgagee or trustee, "its first mortgage upon the railroad of this company, constructed "and hereafter to be constructed, and known as the Vicksburg, "Shreveport and Pacific railroad, and running from a point on "the Mississippi river, nearly opposite the city of Vicksburg, "and near or at the town of Delta, in the State of Louisiana; "thence westward through the northern part of Louisiana by
"way of Monroe, on the Ouachita river; thence to Shreve-
135–39 "port on the Red river; thence westward to the State line
"of Texas, and on all the immunities and franchises which "have been, or may hereafter be acquired by this company, and

" upon all rights of way, lands, property, water-stations, warehouse-
" buildings, machine shops, structures and improvements, which
" have been or may hereafter be erected thereon, and upon all and
" singular the cars, locomotives, engines, wagons, machinery, fix-
" tures, utensils and effects of every nature and description, whatso-
" ever, in use, or intended to be used, upon the said railroad, or in any
" way attached or appertaining to the same, or which may hereafter
" be placed upon, or become attached to, the said railroad in any
" manner, or for any purpose, without any exception or reservation,
" including all the lands in any way acquired by this company,
" either by purchase, donation or otherwise, for any purpose, whether
" for right of way or depot grounds, but excluding from said mort-
" gage all unsold lands which have been, or which shall hereafter
" be, acquired under any act of Congress of the United States donat-
" ing land to the State of Louisiana, and heretofore granted to the
" Vicksburg, Shreveport and Texas Railroad Company, to aid in the
" construction of said railroad by the State of Louisiana, or which have
" been, or may hereafter be, granted to this company by or through
" the State of Louisiana, or by or under any act of Congress of the
" United States, or of the State of Louisiana, or otherwise acquired,
" or to be acquired, from or through the State of Louisiana, or the
" United States, or by or through any act of the State of Louisiana,
" or of the United States, now existing or hereafter enacted, not now
" used, or hereafter to be used, for right of way, depot grounds, or
" other railroad purposes, of this company. The said mortgage to
" contain a provision that in case of default in the payment of any
" interest falling due on said bonds, or on any of them, and such
" default continuing for the space of one hundred and eighty days,
" that the principal of said bonds shall thereupon become due and
" payable, anything contained in said bonds or said mortgage to the
" contrary notwithstanding, and that the said trust com-
135–40 " pany thereupon, upon written request of the holders of at
" least one hundred of said bonds so in default, shall take
" the necessary steps, by way of foreclosure, or otherwise, to enforce
" the payment of said bonds without any unreasonable delay, and
" which said mortgage shall be duly passed by an act before a
" notary in and for the parish of the domicil of this company in the
" State of Louisiana, or before some other officer duly authorized to
" pass the same, so as to give validity and effect to the said mort-
" gage, pursuant to the laws of the State of Louisiana, and that said
" mortgage be duly recorded in the proper parishes of the State of
" Louisiana, and that the execution of said bonds and mortgage be
" attested by the president and secretary of this company, and that
" the usual certificate of the said Farmers Loan and Trust Company
" be required on the back of each of said bonds before delivery."

And whereas, at a subsequent meeting of the board of directors of said party of the first part, duly held on the tenth day of August, one thousand eight hundred and eighty-one, this present indenture of mortgage, and the form of bond therein described, were submitted

to the board for approval, and thereupon the following resolutions were passed:

"*At a meeting* of the board of directors of the Vicksburg, Shreve-
"port and Pacific Railroad Company, duly held in the city of New
"York, on the tenth day of August, 1881, the proposed indenture of
"mortgage, authorized to be issued by the resolution of the board of
"directors of this company, passed on the 8th day of June, 1881, be-
"tween this company, of the first part, and the Farmers Loan and
"Trust Company, of the second part, and bearing date the first day
"of July, 1881, to secure the payment of the $4,000,000 of first mort-
"gage bonds, therein referred to, was submitted to this board for
"approval, and there was also submitted to this board, at the same
"time, for approval, one of the first mortgage bonds, which have
"been printed from a plate belonging to this company, and altered,
"as far as practicable, to conform to the bond authorized by the said
"resolution of the 8th of June, 1881. And, after examination of the
"said bond and the said mortgage, it was—

135-41 "*Unanimously resolved*, That it is necessary, for the pur-
"pose of constructing the portions of the railroad of this
"company not now constructed, and for the purpose of repairing
"and completing the whole road, and properly equipping the same,
"and for other legitimate purpose of this company, that the said four
"million of first mortgage bonds, authorized to be issued by this
"company, by the said resolution of the eighth day of June, one
"thousand eight hundred and eighty-one, be issued and disposed of
"for the purposes aforesaid; it is further

"*Resolved*, That this board approve of the said indenture of mort-
"gage, now submitted to the board, between this company, of the
"first part, and the Farmers Loan and Trust Company, of the sec-
"ond part, bearing date the first day of July, one thousand eight
"hundred and eighty-one, and authorized to be issued by the said
"resolution of the said board of directors of eighth of June, one
"thousand eight hundred and eighty-one, and this board also ap-
"prove of the form, substance, terms and provisions of said mort-
"gage in every respect, and the form and substance of the said
"bond so submitted to this board, as aforesaid, and which said bond
"is set out at length in the said mortgage.

"*And further resolved*, That this company duly make and exe-
"cute, under its corporate seal, and that the president and secretary
"of this company attest, and duly acknowledge and deliver, the
"said mortgage and the said bonds therein referred to, and that the
"said mortgage shall be duly passed, by an act before a notary in
"and for the parish of the domicil of this company, in the State of
"Louisiana, or before some other officer in the city of New York,
"duly authorized to pass the same, so as to give validity and effect
"to the said mortgage, pursuant to the laws of the State of Louisi-
"ana, and the president and secretary are hereby authorized and
"empowered to do and make any and every act, matter and thing
"necessary before such notary and officer, to pass said act, and to

"give validity and effect to said mortgage, pursuant to the laws of "Louisiana, and that the said mortgage be duly recorded in the "proper parishes of the State of Louisiana, and that the usual
135–42 "certificate of said Farmers Loan and Trust Company be "required on the back of each of said bonds before de- "livery."

Now this indenture witnesseth, that the party of the first part, in consideration of the premises, and for the purpose of securing the payment of the said bonds, namely: four thousand bonds of one thousand dollars each, gold coin of the United States of America, of the present coinage, aggregating four millions of dollars, and the interest to accrue thereon, in like gold coin, and which bonds are hereinafter particularly described, and in consideration of the sum of one dollar, lawful money of the United States, paid to the party of the first part by the party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, released, confirmed, assigned, transferred and set over, and by these presents doth grant, bargain, sell, release, confirm, assign, transfer and set over to the said party of the second part, and its lawful successor in the trust hereby created, all and singular said railroad of the party of the first part, constructed and hereafter to be constructed, and known as the Vicksburg, Shreveport and Pacific railroad (and formerly known as the Vicksburg, Shreveport and Texas railroad), and running from a point on the Mississippi river nearly opposite the city of Vicksburg, and near or at the town of Delta, in the State of Louisiana; thence westward through the northern part of Louisiana, by way of Monroe, on the Ouachita river; thence to Shreveport on the Red river; thence westward to the State line of Texas, and all and singular the immunities and franchises which have been, or may hereafter be, acquired by the party of the first part and all rights of way, lands, property, water-stations, warehouse-buildings, machine shops, structures and improvements which have been or may hereafter be erected thereon, and all and singular the cars, locomotives, engines, wagons, machinery, fixtures, utensils and effects, of every nature and description whatsoever in use, or intended to be used, upon the said railroad, or in any way attached or appertaining to the same, or which may hereafter be placed upon, or become attached to, the said railroad in any manner, or for any purpose, without any exception or reserva-
135–43 tion, including all the lands in any way acquired by the party of the first part, either by purchase, donation or otherwise, for any purpose, whether for right of way or depot grounds, but excluding from the operation of this mortgage all unsold lands which have been or which shall hereafter be acquired by said party of the first part, as aforesaid, not now used or hereafter to be used, for right of way, depot-grounds, or other railroad purposes of the party of the first part, as aforesaid—

To have and to hold the same with the appurtenances, unto the party of the second part, its successors, successor and assigns, in trust

for the benefit, use and security of the several persons who shall be or become holders and owners of the said bonds to be secured hereby, and to be made and issued as aforesaid; subject, however, to the right of the party of the first part, its successors and assigns, to retain the free use, enjoyment, possession and management of the railroad and premises hereby mortgaged, or intended so to be, and the earnings thereof, until by reason of default by the party of the first part in paying the interest or principal of said bonds, or any of them, or in keeping and performing its covenants and agreements, or some of them, herein contained, the party of the second part shall be authorized, as hereinafter provided, to enter upon and take possession of, or sell, the said railroad and premises, as hereinafter set forth.

And the party of the first part, in consideration of the premises, and in consideration aforesaid, for itself, its successors and assigns, covenants and agrees, to and with the said party of the second part, its successors, successor or assigns, and with all persons who may be, or may hereafter become owners of the said bonds, or of any of them, in manner following, that is to say:

First. That the party of the first part will punctually pay to the holders of all of the said four millions of dollars of bonds intended to be secured hereby, interest thereon, at the rate of six per cent. per annum, in gold coin as aforesaid, semi-annually, when the same shall become due and payable according to the terms of the said bonds, and of the coupons attached thereto, on the days, and at the place therein respectively mentioned, and also will fully pay
135–44 the principal of the said bonds, in gold coin, as aforesaid, at the maturity thereof, or whenever such principal shall sooner become due by reason of default in the payment of interest, or otherwise, as hereinafter provided, without deduction from either said principal, or interest, of any tax, levy or assessment, hereafter imposed on the said railroad, or other mortgaged premises, or imposed upon the principal or interest of the said bonds by the United States of America, or by the State of Louisiana.

Second. That if the party of the first part, its successors or assigns, shall at any time make default in the payment of any interest falling due on said bonds, or any of them, secured or intended to be secured hereby, and such default shall continue for the space of one hundred and eighty days, that the principal of the said bonds shall thereupon become due and payable, anything contained in the said bonds, or herein contained to the contrary notwithstanding, thereupon the said party of the second part, its successors, successor or assigns, upon the written request of the holders of at least one hundred of the said bonds so in default, shall, for the purpose of enforcing payment of the principal and interest on said bonds, by themselves or their agents, take, and they are hereby authorized to take, actual possession of the said railroad and premises hereby mortgaged, or intended so to be, and operate the same, and take the management and control of the said railroad and mortgaged premises and receive the

earnings of the same until the said mortgaged premises shall be sold, as hereinafter provided.

Third. If, however, no continuing default shall have been made in the payment of interest, as hereinbefore provided, but default shall be made in the payment of the principal of the said bonds, or any of them, as the same shall fall due, and such lastmentioned default shall continue for the space of ninety days; that thereupon the party of the second part, its successors, successor or assigns, upon the written request of the holders of at least one hundred of the said bonds so in default, shall, for the purpose of enforcing payment of the principal of the said bonds, and any interest due or accruing thereon, by themselves or their agents, take, and they are
135–45 hereby authorized to take, actual possession of the said railroad and premises hereby mortgaged, or intended so to be, and operate the same, and take the management and control of the said railroad and mortgaged premises, and receive the earnings of the same, until the said mortgaged premises shall be sold, as hereinafter provided.

Fourth. In case of the continuing default for the space of one hundred and eighty days in the payment of the interest on the said bonds, or of any of them, as aforesaid, or in case of the continuing default for the space of ninety days in the payment of the principal of the said bonds, or of any of them, as hereinbefore provided for, said party of the second part, its successors, successor or assigns, upon the written request of the holders of at least one hundred of said bonds so in default by non-payment of interest or principal, as the case may be, shall, after entry as aforesaid, or other entry, or without entry, sell the said railroad and other mortgaged premises, including the said immunities and franchises, as an entirety, and all benefit and equity of redemption of the party of the first part, its successors and assigns therein, to the highest bidder, at public sale, in the city of New Orleans, first giving at least three months' notice of said intended sale, by publication, to be made, twice in each week, in at least two daily newspapers published in the city of New Orleans, also in one daily newspaper published in the city of Vicksburg, Mississippi, and also in two daily newspapers published in London, England, and convey the same to the purchasers or purchaser thereof, and execute and deliver to the purchasers or purchaser thereof, a proper deed which shall convey to them or him full, valid and indefeasible title to the said railroad and other mortgaged premises, including the said immunities and franchises, which sale and conveyance shall be a perpetual bar, in law or equity, to any claim or demand thereto, or to any part thereof by said party of the first part, its successors or assigns, or by any person claiming or to claim under the said party of the first part, or the said party of the second part, its successors, successor or assigns, if so required by the last mentioned written request, or other written request by said holders of one hundred of said bonds so in default
135–46 as aforesaid, instead of selling said railroad in manner aforesaid, shall proceed to foreclose, and shall foreclose this

mortgage in any court having jurisdiction in the premises, and have said railroad, mortgaged premises, immunities and franchises, as an entirety, and all benefit and equity of redemption, as aforesaid, sold, by decree of such court, and in such manner as is provided by law, and that such sale shall be a perpetual bar, in law and equity, against the party of the first part, its successors and assigns, and against all and every person claiming or to claim through or under said party of the first part, and its successors and assigns, in respect to said railroad, mortgaged premises, immunities and franchises, and every part thereof.

Fifth. That on any sale of the mortgaged premises as hereinbefore provided, or on any judicial sale thereof, the said party of the second part, its successors or successor, may, upon the written request of the holders of any of the said bonds, bid for and purchase the mortgaged premises on behalf of such holders.

Sixth. If possession shall be taken of the said railroad and mortgaged premises, as hereinbefore provided, or of any part thereof, the proper expenses of taking, holding, managing and operating said railroad and mortgaged premises so taken possession of, including any expenses of repairs to the same, shall be defrayed from the earnings thereof, and if the earnings be insufficient for that purpose, the deficiency shall be taken from the proceeds of sale of the said railroad and mortgaged premises. All net earnings of said railroad and mortgaged premises, while so in possession of the said party of the second part, its successors or successor, as well as the proceeds of sale of the said railroad and mortgaged premises, or so much thereof as may remain, as aforesaid, shall after payment thereout of all taxes then on the said railroad and mortgaged premises (unless the same shall be sold subject to such taxes, if any there shall be), and the payment of all just and proper expenses in the premises, to the party of the second part, its successors or successor, together with a proper compensation for the services of the party of the second part, its successors or successor, shall be applied in
135–47 the first place to the payment of all interest in arrears on all of the said bonds then outstanding, if sufficient for that purpose, and if not sufficient, then *pro rata;* and in the second place, after payment of such interest in arrear, to the payment of the principal of all the said bonds outstanding in full, if sufficient for that purpose, and if not sufficient, then *pro rata;* and after the payment in full of all of the said outstanding bonds, principal and interest, then to pay the surplus, if any there shall be, to the party of the first part, its successors or assigns.

Seventh. The said bonds to be issued under and by virtue of this mortgage, or deed of trust, and to be secured hereby, shall be bonds of the denomination of one thousand dollars each, and of the tenor and effect following:

"Gold, 1000 dollars. Gold, 1000 dollars.

"UNITED STATES OF AMERICA,
"*State of Louisiana.*

"*First Mortgage Six per Cent. Gold Bond.*

"Vicksburg, Shreveport and Pacific Railroad Company.

"*The Vicksburg, Shreveport and Pacific Railroad Company*, acknowledges itself indebted to the bearer in the sum of one thousand dollars, gold coin of the United States of America, of the present coinage, which the said company promises to pay, at its agency in the city of New York, on the first day of January, one thousand nine hundred and twenty, with interest thereon, in gold, at the rate of six per centum per annum, payable semi-annually, at the place aforesaid, on the first days of January and July in each and every year, on the presentation and surrender of the annexed coupons as they severally become due.

"*This bond* is one of a series of bonds of even date, tenor and amount herewith, amounting in the aggregate to four million dollars, issued by authority of the stockholders and the board of directors of the Vicksburg, Shreveport and Pacific Railroad Company, in accordance with its charter and the laws of Louisiana, the payment whereof is secured by a first mortgage lien and privilege on the railroad of the company, from the Mississippi river,
135–48 in Madison parish, westward through the parishes of Ouachita and Caddo, to the State line of Texas, its real and personal property and franchises except land grant, executed in favor of the Farmers Loan and Trust Company, trustee and mortgagee, and of even date herewith.

"*The* principal and interest of this bond are payable without deduction for taxes, the company hereby agreeing to pay the same.

"*This bond* shall not be obligatory upon the company until the certificate endorsed hereon is signed by the trustee.

"*This bond* shall pass by delivery unless registered on the books of the company, but, after registration of ownership duly certified hereon, no transfer except upon the books of the company shall be valid unless the last registration shall have been to bearer, and this bond shall continue subject to successive registrations and transfers to bearer at the option of the holder.

"*In witness whereof*, the said company has caused its common seal and the signatures of its president and secretary to be affixed, at Monroe, in the State of Louisiana, this first day of July, A. D. eighteen hundred and eighty-one.

"VICKSBURG, SHREVEPORT AND
PACIFIC RAILROAD COMPANY,
"By OTTO PLOCK, *President.*

"DIEDRICH GRAFF, *Secretary.*"
"Attest."

To each bond are to be attached the usual coupons for the payment of the semi-annual interest, thirty dollars, in gold coin of the United States, during each and every year of the running of said bond, payable in New York, free of tax.

Said bonds to be numbered from one to four thousand, both inclusive.

It is expressly agreed and understood, between the parties hereto, that in case foreclosure proceedings shall be instituted for the foreclosure of this mortgage, or trust deed, or in case a receiver shall be appointed in such proceedings, that no certificates or other
135–49 evidences of debt or creation of liability shall be authorized by the court, or be issued by such receiver, or otherwise issued, so as to create or become a preference or lien upon the said railroad or mortgaged premises, or any part thereof, or on the proceeds of sale thereof, or any part thereof, or to be paid out of the proceeds of sale thereof, prior to the payments of interest and principal in full on all of the said bonds then outstanding.

It is expressly agreed and understood, between the parties hereto, that the party of the second part, its successors or successor, shall not be responsible except for its own act or actual negligence, and shall not be accountable for the acts of any agent, when such is necessarily employed, who is not an officer or regular employee of the said party of the second part, its successors or successor.

It is expressly agreed and understood between the parties hereto, that in case the party of the second part shall hereafter become, by law or otherwise, incapacitated to perform, or shall refuse to perform, the duties herein imposed upon it, then its successor or successors shall be appointed, who shall, by such appointment, become vested with all the rights, powers and duties herein imposed upon the said party of the second part; such appointment shall be made in manner following: *A meeting* of the holders of the said bonds shall be called, in the city of New York, by an advertisement, once in each week for three months, in three daily papers published in the city of New York, and in one daily paper published in the city of New Orleans and in two daily papers published in the city of London, England at the expense of the party of the first part, in which advertisement, the time and particular place of such meeting, and the object of the meeting shall be stated; such call shall be made by the president of the party of the first part, or, in case of his neglect or refusal to make the same, then by any of the holders of the said bonds; and the persons or person who shall be appointed at said meeting, by a majority of the votes represented at said meeting (each bondholder, in person or by proxy in writing, being entitled to one vote for each and every bond held by him) shall be such successors or successor, as the cause may be, and the minutes of said meeting, signed by the president and secretary thereof, shall be due evidence of such
135–50 appointment. *The party* of the second part hereby *accepts* the trusts hereby reposed in it, and signifies its *acceptance* by its

corporate seal hereto attached, and attested by the signature of its president.

In witness whereof, the said party of the first part, the Vicksburg, Shreveport and Pacific Railroad Company, has caused its corporate seal to be hereto affixed, and the same to be attested by its president and secretary, and the party of the second part, the Farmers Loan and Trust Company, to signify its acceptance of the trusts hereby reposed in it, has hereunto set its corporate seal, and has caused the same to be attested by its president this tenth day of August, in the year one thousand eight hundred and eighty-one.

VICKSBURG, SHREVEPORT AND PACIFIC RAILROAD COMPANY,
By OTTO PLOCK, *President.*
[L. S.] DIEDRICH GRAFF, *Secretary.*
THE FARMERS LOAN & TRUST COMPANY,
[L. S.] By R. G. ROLSTON, *President.*

Signed, sealed and delivered in the presence of

HENRY JUNG,
OTTO F. RAPPELMANN,
As to Otto Plock, president, and Diedrich Graff, secretary.

As to R. G. Rolston, president, F. Munn, ass't secretary,

W. D. SEARLS.
T. A. WILSON.

Attest:

F. MUNN, *Ass't Sec'y.*

STATE OF NEW YORK, }
City and County of New York, } *ss:*

And now be it known that, in order the further to secure and protect the mortgagee, trustee and holders of the bonds described in the foregoing instrument, in accordance with the laws of the State
135–51 of Louisiana, where the property described and set forth in said instrument is situate, and where the *Vicksburg, Shreveport and Pacific Railroad Company*, the mortgagor, is domiciled, and for the purpose of properly executing said instrument, with the covenants therein, this day, before me, Edwin F. Corey, a commissioner for the State of Louisiana, resident in the city of New York, duly commissioned and qualified by the executive authority of and under the laws of the State of Louisiana, to take acknowledgments and proofs of deeds or other conveyances, to be used or recorded in the said State of Louisiana, and duly sworn, personally came and appeared Otto Plock, known to me, president of the said Vicksburg, Shreveport and Pacific Railroad Company, and Diedrich Graff,

known to me, secretary of the said last mentioned company, a corporation duly incorporated by and under the laws of the State of Louisiana, and being a corporation of the said State of Louisiana, and herein acting in their said respective capacities, by virtue and in pursuance of the resolutions of the board of directors of the said Vicksburg, Shreveport & Pacific Railroad Company, and also by the authority conferred upon the said company by its charter, and acts of incorporation and acts amendatory thereof, specially authorizing the same, declared, that they have this day executed, under the corporate seal of the said company, four thousand first mortgage bonds of the said company, numbered from *one* to *four thousand*, both inclusive, bearing date the first day of July, one thousand eight hundred and eighty-one, for the sum of one thousand dollars each, aggregating four million dollars, payable in gold coin of the United States of America, of the present coinage, on the first day of January, A. D. one thousand nine hundred and twenty, with interest thereon at the rate of six per cent. per annum in like gold coin, payable semi-annually on the first days of January and July in each and every year, as more fully described in the said instrument.

And also, in consideration of the premises, and by virtue and in further pursuance of the several authorizations hereinbefore stated, and in order to secure the full, faithful and effectual payment and redemption of each and all of said bonds, and their coupons
135–52 thereto attached to any and all future holder or holders thereof, and to each and every of them, when the same shall become due and payable, and the said Vicksburg, Shreveport and Pacific Railroad Company does by these presents, by its said president, the said Otto Plock, and by its said secretary, the said Diedrich Graff, grant in favor of the Farmers Loan and Trust Company, its successors, successor or assigns, as well as in favor of all and every person or persons who may be or may become the holder or holders of the said bonds, coupons or any of them, a mortgage lien and privilege upon all and singular the railroad property, immunities and franchises mentioned and described in the said instrument as being intended thereby to be mortgaged; and bind said Vicksburg, Shreveport and Pacific Railroad Company not to alienate, deteriorate, or in any manner encumber the said mortgaged premises to the prejudice of this mortgage.

And also came the said Otto Plock, president, and the said Diedrich Graff, secretary of the last mentioned company, who are personally known to me to be the identical parsons who signed the foregoing instrument, and also known to me to be such president and such secretary of the said Vicksburg, Shreveport and Pacific Railroad Company, the party of the first part in the foregoing instrument, and the said Otto Plock did say and acknowledge that he resides in the city of New York, that he is president of the said Vicksburg, Shreveport and Pacific Railroad Company, and the said Diedrich Graff did say and acknowledge that he resides in the city of Brooklyn, county of Kings, and State of New York, that he is secre-

tary of the last mentioned company, and they both did say and acknowledge that they know the corporate seal of the said last mentioned company, that the seal affixed to the foregoing instrument is such corporate seal, and was affixed thereto by authority of the said last mentioned company, and that they signed their names to said instrument respectively as president and secretary of the said last mentioned company, and in behalf thereof, and they then and there acknowledged that they had signed, sealed and delivered the said instrument as their respective official act and deed
135–53 of the last mentioned company, and for the uses and purposes therein expressed, on the day and year herein mentioned.

And at the same time and place, before me personally came and appeared Roswell G. Rolston, who is personally known to me, and also known to me to be the president of the Farmers Loan and Trust Company, the mortgagee or trustee and party of the second part, in the said instrument, a corporation duly incorporated by and under the laws of the State of New York, and herein acting in his said capacity of president, by authority of the last named corporation and known to me to be the identical person who signed the foregoing instrument, who thereupon did declare, say and acknowledge, that he resides in the city of New York, and State of New York, that he is the president of the said Farmers Loan and Trust Company, and that he knows the corporate seal of the said last mentioned company, that the seal affixed to the foregoing instrument is such corporate seal, and was affixed thereto by authority of the last mentioned corporation, and that he signed his name to said instrument as president of the said last mentioned company, and in behalf thereof, and he then and there acknowledged that he had signed, sealed and delivered the said instrument as his official act and deed of the last mentioned company, for the uses and purposes therein expressed on the day and year herein mentioned.

In witness whereof, I have hereunto set my hand, and affixed
[L. S.] my official seal, this sixteenth day of August, one thousand eight hundred and eighty-one.

EDWIN F. COREY,
Commissioner for the State of Louisiana,
Office, 54 Wall Street, New York.

(Endorsed: Dated July 1, 1881. The Vicksburg, Shreveport and Pacific *Pacific* Railroad Company to the Farmers Loan and Trust Company. Copy first mortgage, $4,000,000. Martin & Smith, counsellors-at-law, 50 Wall street, New York.)

135–54 *Answer. Filed April* 23, 1900.

U. S. Circuit Court, Fifth Circuit, Western District of Louisiana, Monroe Division.

FARMERS LOAN & TRUST COMPANY, Trustee,
vs.
VICKSBURG, SHREVEPORT & PACIFIC R. R. Co. } No. 216.

The Vicksburg, Shreveport & Pacific Railroad Company, a corporation created by and existing under the laws of the State of Louisiana, and a citizen of said State, domiciled at Monroe, for answer to the bill of complaint of the Farmers Loan & Trust Company, trustee, or unto so much thereof as this defendant is advised it is material or necessary for it to make answer unto, answering saith:

(1.) This defendant admits that the complainant, The Farmers Loan & Trust Company, trustee, is a corporation created by and existing under and by virtue of the laws of the State of New York:

And that it has presented to the circuit court of the United States for the western district of Louisiana its bill of complaint against the said defendant, and that in and by the said bill of complaint, a foreclosure of a certain indenture of mortgage or deed of trust, dated July 1st, 1881, and known as the first mortgage of this defendant, is sought to be foreclosed.

(2.) This defendant admits that on the 1st day of July, 1881, and long prior thereto, it existed as a corporation known as the Vicksburg, Shreveport & Pacific Railroad Company, constituted and possessing the powers as set out in the said bill of complaint.

(3.) This defendant admits that on July 1st, 1881, and long prior thereto, it owned and operated a line of railway in the State of Louisiana from Delta to the Texas line, as alleged in this bill of complaint.

(4.) This defendants admits that on or about the 1st day of July, 1881, it duly executed its 4000 bonds of $1000.00 each, known as first mortgage, under the terms and upon the conditions and in the manner set out in the said bill of complaint.

(5.) This defendant admits that on or about the 1st day of July, 1881, it did execute and deliver to complainant the deed of
135–55 trust or mortgage known as its first mortgage, whereby it conveyed to said complainant, as trustee, the property therein fully described, in the manner and form as averred in said bill of complaint.

(6.) This defendant admits that it granted in favor of said trustee and of any future holders or holder of said bonds, a mortgage and lien upon its said property, as set out in said bill of complaint.

(7.) This defendant admits that the execution of said first mort-

gage was duly authorized by its board of directors, and was executed, acknowledged and recorded, as required by law.

(8.) This defendant admits that under the terms and provisions of said first mortgage, said bonds were to be certified by said trustee, complainant, and that it issued, executed and delivered to complainant, as trustee, the said bonds, numbered from one to four thousand, both inclusive, amounting in the aggregate to $4,000,000.00, and that the same are duly certified and are actually outstanding in the hands of *bona fide* holders thereof.

Defendant admits that $3,692,000.00 of said bonds, duly registered, are held by the Alabama, New Orleans Texas and Pacific Junction Railways Company, Limited, and that all of said bonds have been duly certified and registered, as set forth in said bill of complaint.

(9.) Said defendant admits that on $308,000.00 of said bonds, the interest has been paid punctually, in conformity with the terms of the mortgage, and that no interest whatever, and no coupons have been paid on said $3,692,000 of said first mortgage bond-, except as stated in said bill of complaint, and that the amount of interest due thereon is the sum of $2,320,197.52.

This defendant admits default in the payment of said interest as averred in this bill of complaint and that default in said payment has been made as therein set forth.

(10.) This defendant admits that it is provided in said first mortgage that continuing default in the payment of interest for the space of (180) one hundred and eighty days, shall cause the principal of said bonds to become due and payable; and that written request has been made upon complainant by the holders of
135–56 $3,692,000.00 of said first mortgage bonds to foreclose this mortgage, in manner and form as provided for therein, and in said bill of complaint.

(11.) This defendant admits that it is insolvent and unable to pay its indebtedness, and that its mortgaged property is insufficient to pay its first mortgage bonds, after providing for the payment of liens prior thereto and preferred claims.

This defendant admits that a suit has been instituted against it by the holders of some sixty-four or of its third morgage bonds, and that it had good reason to believe that said suit is instituted for the purpose of wasting and impairing its property covered by said first mortgage, and that there is danger that such action might be taken in such suit as would result in great injury to this defendant and in destroying or greatly impairing the value and earning capacity of its property.

(12.) This defendant admits that complainant has taken no action or suit at law against it, except only this action, and this defendant admits the validity and binding force and effect of the obligations herein sued upon, and the necessity for the proper protection of the holders of said first mortgage bonds, as well as all its others creditors, that a receiver should be appointed and an injunction granted and

that said mortgage should be foreclosed as set out in the prayer of complainant's bill herein.

And, therefore, this defendant prays that this honorable court shall enter such proper order or orders in the premises as are asked for in said bill of complaint; that a proper person be appointed as a receiver of all of its property, that the injunction issue herein as prayed for, and that in due time a decree of foreclosure be entered, and for such further action of the court as may be found to be most proper for the protection of the holders of said first mortgage bonds and of all other creditors of this defendant.

VICKSBURG, SHREVEPORT AND
PACIFIC R. R. CO.,
By LARZ. A. JONES, *Auditor.*

Larz. A. Jones, being duly sworn, says that he is the auditor of the Vicksburg, Shreveport & Pacific Railroad Company, defendant herein, and that he is authorized to represent the said rail-
135–57 road company in the absence of its president, C. C. Harvey, and its vice-president, Chas. Schiff; that affiant has been duly authorized, by a resolution of the board of directors, to file this answer and make the admissions therein contained; that the allegations therein contained, as far as they relate to his own acts, are true and as far as they relate to the acts of others, he believes them to be true.

That in regard to matters and things of the foregoing answer alleged, which are not within the personal knowledge of this deponent, the deponent has been duly informed and he believes that they are true.

LARZ. A. JONES.

Sworn to and subscribed to before me this 21st day of April, 1900.

H. J. CARTER,
[SEAL.] *U. S. Commissioner.*

Filed April 23d, 1900.

W. A. O'KELLY, *D'y Clerk.*

(Endorsed: No. 216. U. S. circuit court, western district of Louisiana, Monroe division. Farmers' Loan & Trust Co., trustee, *vs.* Vicksburg, Shreveport & Pacific R. R. Co. Answer. Filed April 23d, 1900. W. A. O'Kelly, d'y clerk)

Application for Appointment of Receiver.

U. S. Circuit Court, Fifth Circuit, Western District of Louisiana, Monroe Division.

FARMERS LOAN AND TRUST COMPANY, Trustee,
vs.
VICKSBURG, SHREVEPORT & PACIFIC R. R. Co. } No. 216.

To the honorable the judges of said court:

The Vicksburg, Shreveport and Pacific Railroad Company, herein represented by Larz. A. Jones, its auditor, herein acting in the absence of its president, C. C. Harvey, and its vice-president, Charles Schiff, and being duly authorized by said president and vice-president, and further hereto authorized by a resolution of its board of directors, requests your honors to appoint as the receiver herein, J. H. McCormick, Esq., a resident of Monroe, La., and of this district.

135–58 L. A. Jones, being sworn, says that he is duly authorized as hereinbefore set out to make this application.

LARZ. A. JONES.

Sworn to and subscribed before me, this 21st day of April, 1900.

H. J. CARTER,
[SEAL.] *U. S. Commissioner.*

Concurrence in Application for Appointment of Receiver.

U. S. Circuit Court, Fifth Circuit, Western District of Louisiana, Monroe Division.

FARMERS LOAN & TRUST COMPANY, Trustee,
vs.
VICKSBURG, SHREVEPORT & PACIFIC R. R. Co. } No. 216.

To the honorable the judges of said court:

May it please your honors:

The Farmers Loan & Trust Company, complainant herein, and trustee of said first mortgage, hereby concurs in the application of the Vicksburg, Shreveport & Pacific Railroad Company for the appointment of J. H. McCormick, Esq., of Monroe, La., as receiver, under the bill of complaint herein.

TURNER, McCLURE & ROLSTON,
By HARRY H. HALL,
Solicitors for Complainant.

HARRY H. HALL, *Of Counsel.*

Concurrence in Application for Appointment of Receiver.

U. S. Circuit Court, Fifth Circuit, Western District of La., Monroe Division.

FARMERS LOAN & TRUST COMPANY, Trustee,
vs.
VICKSBURG, SHREVEPORT & PACIFIC R. R. Co. } No. 216.

To the honorable the judges of said court:

The Alabama, New Orleans, Texas & Pacific Junction Railways Company, Ltd., a corporation organized under the laws of Great Britain, and domiciled in London, with respect represents:

135-59 That it is the owner and holder of the following bonds and obligations of the Vicksburg, Shreveport & Pacific Railroad Company, to-wit:

Of the $4,000,000.00 of first mortgage, it holds and owns $3,692,000.00 upon which bonds are due in interest $2,320,197.52.

Of the $1,820,750, third mortgage & land grant bonds, it holds and owns $1,364,000.00.

Of the $494,860 4% income bonds, it holds and owns $494,860.

Of the $1,601,500.00 of capital stock, it holds and owns $1,594,000.00.

And your petitioner concurs in the application herein made by the defendant company for the appointment of J. H. McCormick, Esq., as receiver, under the bill of complaint herein.

HARRY H. HALL, *Att'y.*

Larz. A. Jones, auditor, being sworn, says that the above statement of the holdings of petitioner is true and correct and that this application that J. H. McCormick, Esq., be appointed receiver, has been duly authorized by said Alabama, New Orleans, Texas & Pacific Junction Railways Company, Ltd.

LARZ. A. JONES.

Sworn to and subscribed to before me this 21st day of April, 1900.

[SEAL.]

H. J. CARTER,
U. S. Commissioner.

Petition and Order Appointing Receiver. Filed April 23, 1900.

In the Circuit Court of the United States, Fifth Circuit and Western District of Louisiana, Monroe Division. In Equity.

THE FARMERS LOAN & TRUST COMPANY, Trustee, Complainant,
vs.
THE VICKSBURG, SHREVEPORT & PACIFIC RAILROAD Company, Defendant. } No. 216.

In this case, on the 21st day of April, 1900, comes The 135–60 Farmers Loan & Trust Company, trustee, complainant, by its solicitors, Messrs. Turner, McClure & Rolston and Harry H. Hall, Esq., its counsel, and also comes the defendant, The Vicksburg, Shreveport & Pacific Railroad Company.

And said railroad company having filed its sworn answer, as shown by affidavits to have been duly authorized by its officers and board of directors, and having admitted all of the allegations of the bill of complaint herein, the necessity for the appointment of a receiver and the issuance of an injunction, and it appearing from the sworn application that the defendant railroad company—said trustee, complainant—and the owners and holders of $7,850,000.00 of the mortgage bonds and interest of said defendant, and of $1,594,000.00, out of a capital stock of $1,601,500.00, have applied to this court for the appointment of J. H. McCormick, Esq., of Monroe, La., to be appointed receiver of the property of this defendant.

It is now hereby ordered, adjudged and decreed, that J. H. McCormick, Esq., be and he hereby is appointed receiver of the property in the State of Louisiana of the Vicksburg, Shreveport & Pacific Railroad Company and that covered by the mortgage made by the said company which is sought thereby to be foreclosed in the bill of The Farmers Loan & Trust Company, trustee, complainant, with the following powers and instructions, to-wit:

(1.) Said receiver is hereby directed to take immediate possession of all of the said property, and to operate and cause to be operated the said railroad, as aforesaid, as herein provided, and to preserve and protect all of the said mortgaged property, acting in all things under the order of this court.

(2.) That this receiver is authorized to defend any actions pending or which may be brought, seeking to establish claims, liens or demands against the said company or its property, and to institute and prosecute any action which may be necessary for the recovery of any money or property due to the said Vicksburg, Shreveport & Pacific Railroad Company.

(3.) Said receiver shall also pay, out of any income or revenues

which may come into his hands, all just claims and ac-
135–61 counts for labor, supplies, professional services, salaries of officers and employees remaining unpaid, and that may have been earned and have matured within three months prior to this day.

(4.) Said receiver shall also pay out of any income or revenues which may come into his hands, all balances due or to become due to other railroads or transportation companies, growing out of the exchange of trafic.

(5.) Said receiver is further ordered and directed to pay all the taxes on the said property as the same shall mature, and also the current expenses in the operation and maintenance of the road, and to collect all the revenues thereof.

(6.) The said receiver is further ordered and directed to keep or cause to be kept such accounts as may be necessary to show the sources from which all the income and revenues shall be derived, with reference to the interest of the holders of the different mortgages resting upon the property of said railroad company.

(7.) Said receiver shall report to this court, from time to time, at least, once in three months, his doings under this order and he may apply to this court for instructions whenever necessary.

(8.) The said receiver before entering upon his duties shall take and subscribe an oath to perform them faithfully, and with one or more sureties, approved by this court or any judge thereof, shall execute an undertaking to the clerk of this court, for the benefit of whom it may concern, in the penal sum of fifty thousand dollars, conditioned to the effect that he faithfully discharge the duties of receiver herein and obey the court.

(9.) It is further ordered that all parties having in their possession any of the property of this company shall upon written demand of said receiver yield and deliver said property to him.

All employees will continue for the present in the same duties as heretofore as agents of the receiver. Existing arrangements will, as far as practicable, be maintained.

(10.) It is further ordered, adjudged and decreed, that a writ of injunction issue herein, directing, commanding, enjoining and restraining the said defendant from interfering with, trans-
135–62 ferring, selling and disposing of any of its property, or from taking possession of, levying or attempting to sell, either by judicial process, or otherwise, any portion of said property, until the further order of this court.

It is further ordered that leave be and the same is hereby given to any party in interest, within thirty days from this date, to appear in this case and be heard, as to the selection of J. H. McCormick, Esq., as receiver, and to urge any objection which he my validly have thereto.

(11) It is further ordered that Wm. Grant, Esq., be appointed special master herein to whom shall be referred, in the absence of a

standing master, all matters in this proceeding which shall require reference.

It is further ordered that the right is hereby reserved to complainant to apply, later, for a decree of foreclosure and for all such further orders and decrees as may be proper in the premises.

All of which orders and appointments the said Vicksburg, Shreveport and Pacific Railroad Company accepts.

A. P. McCORMICK,
Circuit Judge, 5th Circuit.

Filed April 23rd, 1900.

W. A. O'KELLY, *D'y Clerk.*

(Endorsed: No. 216. U. S. circuit court, western district of Louisiana, Monroe division. Farmers Loan and Trust Co., trustee, *vs.* Vicksburg, Shreveport and Pacific R. R. Co. Petition and order appointing receiver. Filed April 23rd, 1900. W. A. O'Kelly, d'y clerk.)

Intervention of Rob't B. Blanks. Filed April 30, 1900.

United States Circuit Court, Fifth Circuit, Western District of Louisiana.

HENRY DENHART HEARMS
vs.
VICKSBURG, SHREVEPORT & PACIFIC R. R. Co. } No. 215.

To the honorable the circuit court of the United States for the circuit of the western district of Louisiana:

Rob't B. Blanks, a citizen and resident of the State of Louisiana, parish of Ouachita, with the consent of the court first had and obtained, brings this, his intervention in the above numbered and entitled cause, for his own interest, and thereupon shows that
135–63 heretofore, to-wit: on the 3rd day of April, A. D. 1900, Henry Denhart Hearms, the complainant aforesaid, brought in this honorable court his bill of complaint, for himself and on behalf of all other persons in like manner interested, against the aforesaid Vicksburg, Shreveport & Pacific Railroad Company, a corporation created by and existing under the laws of the State of Louisiana, with its domicile in the western district, and a citizen of the State of Louisiana, and made in his said bill the following averments, to-wit:

That heretofore, on or about the 1st day of January, 1886, the said railroad company being thereunto duly authorized by its president and secretary, and under its corporate seal, made and executed its 2500 bonds, known as third mortgage and land grant bonds, numbered from 1 to 2500, inclusive, each for the sum of $1000.00, bearing

said date, by the terms of which bonds, said company promised to pay to the holder of each bond the sum of $1000.00, gold coin of the United States, on the 1st day of January, 1916, with interest thereon from the 1st day of January, 1888, payable semi-annually, at the rate of 3% for (3) years, 4% for (3) years, and 5% per annum thereafter, in gold coin of the United States, on presentation and surrender of the respective interest coupons annexed to said bonds.

That, in order to secure the full and punctual payment of said bonds and coupons thereto attached, the said railroad company, by *public act, specially mortgaged and hypothecated unto the Central* Trust Company, of New York, and unto any future holder of said bonds and coupons, the following described property, situated in the western district, viz: "All and singular, the Vicksburg, Shreveport and Pacific railroad, running from a point on the Mississippi river, nearly opposite the city of Vicksburg, and near or at the town of Delta, in the State of Louisiana, thence westward through the northern portion of Louisiana, by way of Monroe, on the Ouachita river, thence to Shreveport on the Red river, thence westward to the State line of Texas, and all and singular, the immunities and franchises which have been or may hereafter be acquired by the said railroad company, and all rights of way, lands, property, water-stations, warehouse buildings, machine shops, structures,
135-64 terminal facilities and improvements, which have been or may hereafter be erected thereon, and all and singular the cars, locomotives, engines, wagons, machinery, fixtures, utensils and effects of every description and nature whatsoever, in use or intended to be used upon said railroad or in any way attached or appertaining to same, or which may hereafter be placed upon or become attached to the said railroad in any manner or for any purpose, without any exception or reservation, including all the lands in any way acquired by the said railroad company, whether by purchase, donation or otherwise, for any purpose, whether for right of way or depot grounds, including all unsold lands which have been or which will hereafter be acquired by or granted by land grants or otherwise to said railroad company."

That in said mortgage it is stipulated and in and by said mortgage and bonds, the said railroad company promised and bound itself to pay said bonds and the interest coupons attached to same, punctually, as they matured, to the holders of same, at its agency in the city of New York, and at the date set forth in said bonds and coupons, or whenever such principal and interest became sooner due by default.

That, in said act of mortgage, it is also stipulated, that in the event the said railroad company shall at any time make default in the payment of any interest falling due on said bonds or any of them, and such default shall continue for the space of 365 days, that the principal of said bonds shall become due and payable.

That the said mortgage, as shown by its terms, is a third mortgage on the said railroad and appurtenances, and a first mortgage

on the lands granted to the said company, and that the property mortgaged is, in value, inadequate and insufficient to pay debt shown by mortgage thereon.

That, in and by said mortgage, it is provided that the railroad may, from time to time, sell said land freed from the lien of either mortgage, upon payment of the proceeds of sale as received, to the said Central Trust Company, which proceeds shall be applied: 1st. To the payment of coupons attached to said bonds in the order of their maturity; 2nd. To the creation of a sinking fund for
135–65 the redemption of said bonds, it being agreed that as often as the sinking fund shall amount to $5,000.00 or more, the trustee shall advertise for bids for sale to him of bonds secured by said mortgage, and that the money in the sinking fund shall be applied as far as it will go to the purchase of said bonds from lowest bidder, such advertisement to be inserted once a week for at least three weeks in a newspaper published in the city of New York.

That it is provided in and by said mortgage, that the said railroad company will, on or before the 2nd Wednesday of September in each and every year, until all of said lands are sold, fix a price at which bonds thereby secured may, at option of holder, be used instead of cash, in the purchase of such lands, and on such use of any of said bonds, the same are to be surrendered to the said Central Trust Company to be cancelled.

That in and by said mortgage the said railroad company bound itself not to alienate, deteriorate or in any manner encumber the said property so mortgaged to the prejudice of the said mortgage. That said mortgage was by public act and duly recorded, that it imports a confession of judgment, and that said mortgage was executed and signed by the president and secretary of the said railroad company, and under its corporate seal in behalf of said company, that being duly authorized by the directors of said company at a meeting duly held on November 27th, 1885, and it being within the power of said directors, under the charter of said company, and under the laws governing corporations, to provide for and authorize the issuance of said bonds and coupons and the mortgage securing the same.

That he (complainant) is the holder and owner of (78) of said bonds, numbered respectively 309 to 338, inclusive; 391 to 404, inclusive; 420 to 438, inclusive; 1010, with (54) coupons, each for $15.00 in gold to each of said bonds attached, which said bonds with coupons are hereto annexed and made a part of his bill, and that each of said bonds bear the certificate of the Central Trust Company endorsed thereon. An authentic copy of said act of mortgage is also annexed and made a part of complainant's bill.

That the said railroad company has defaulted in the pay-
135–66 ment of interest falling due on the said bonds; that such default has continued for more than 365 days, and that as a consequence of such default, the said bonds have become due and are payable.

That among the lands granted to the said railroad company, and so, as aforesaid, mortgaged to secure the said third mortgage land grant bonds, were, at the date of said mortgage, 420,924 acres of land, donated by the United States to the State of Louisiana, in aid of the construction of railroads, and by act of Congress, approved June 3, 1856, and by the said State accepted, and under said act granted to the Vicksburg, Shreveport and Texas Railroad Company by act of the General Assembly of that State, approved March 11, 1857, which land was acquired from said Vicksburg, Shreveport and Texas Railroad Company by Henry R. Jackson and others, and was by them sold and conveyed to the said Vicksburg, Shreveport and Pacific Railroad Company, and which land lies along the line of the railroad of said company, and in said western district, and is particularly described in patents of the State and the United States in lists of lands approved to the said Vicksburg, Shreveport & Texas Railroad Company, by the Secretary of the Interior of the United States, all of which are referred to and made a part of complainant's bill.

That it appears from the 15th Annual Report of the said railroad company, for year ending June 30th, 1899, that said company had disposed of 173,203.24 acres of said lands, and with proceeds of sale have taken up bonds to the amount of $679,250.00, and coupons to the amount of $83,412.50, leaving still outstanding bonds to the amount of $1,820,750.00 with coupons thereto attached.

That it further appears from said report that the railroad company yet has 190,269.51 acres of said land unsold, showing that nearly one-half of the lands have been disposed of and that the proceeds of sale have been paid over to holders of about one fourth of the bonds, leaving to the holders of three-fourths of the bonds about one-half of the lands as security for their bonds.

That the said lands were, under said mortgage, the common pledge and security of the holders of all of the said land
135–67 grant bonds, and that the true intent and meaning and the legal effect of those stipulations in the said act of mortgage relating to the disposal of said lands, was, and is, that the proceeds arising from sale of said lands should be equally apportioned to each of the said bonds and paid over to holders of same.

That in acting under said stipulations, it was and is the duty of said company, and of its directors and officers, to see that the true intent and meaning of said stipulations be carried into effect, and that an equal amount should be apportioned to each bond out of the proceeds of sale of said lands and paid over to the holders thereof. But that the said company, through its directors and officers, have, in distributing the proceeds of sale of said lands, given an unjust and unfair and illegal preference to some of the holders of said bonds, to the prejudice and detriment of other holders of some, and that he (complainant) is informed that such unjust preference was

so given to the directors and officers of said railroad company or some of them.

That he is informed and believes, that the said railroad company, through its officers and directors, have given an unjust and illegal preference to certain holders of said bonds and paid to them interest coupons, while failing and refusing to pay such coupons to complainant and other holders of said bonds and coupons.

That he (complainant) will be irreparably injured if the said railroad company, through its directors and officers, persists in disposing of said lands so as to give a preference to some holders of said bonds, and leave some holders of bonds, including complainant, without any payment whatever, and without the security of the mortgage on such lands, to which they are equitably entitled.

That under said mortgage it was, as hereinbefore set forth, provided that the proceeds arising from the sales of said lands should be paid over to the Central Trust Company, to be applied: 1st. To the payment of the coupons attached to or the bonds secured by said mortgage on said lands, and that according to the statement and report of the directors and officers of said company, the sum of $113,905.54 has been received by said company as cash pro-
135–68 ceeds of the sales of lands, an amount more than sufficient to pay three of the coupons on each of the said bonds, and yet only two of the coupons to bonds, held by complainant, have been paid, and a very large sum, exceeding $40,000.00, which should have been applied to the payment of the coupons aforesaid, has either been diverted by the said railroad company or illegally and inequitably withheld from the holders of bonds, or used in giving an illegal and unjust preference to certain holders of some of said bonds.

That the said railroad company is, in fact and is by the report aforesaid of the said company, shown to be hopelessly insolvent; that said company on the 30th of June, 1899, owed $3,000,000.00 for interest on its bonds, due and unpaid, and the amount so due for such interest has, since that date, been largely increased.

That the directors and officers of said railroad company are so administering its affairs and business as to increase largely its indebtedness, and that under their direction and control, the said company has become insolvent and the value of its real and other property has been greatly depreciated.

That they have been guilty of many and continued acts of maladministration, and that for the protection of the rights and interests of complainant and other creditors of said company, a receiver should be appointed to take charge of the property and administer the affairs of said company pending said suit.

That he (complainant) is informed and believes, and so charges the fact to be, that the said railroad company owes a large floating debt and current and presently accruing indebtedness and that there is great danger that suits will be instituted, against said company and judgments recovered against it, under which its property may be seized and sold, and its business and earning capacity and value of

its line of railroad and other property greatly impaired and deteriorated.

That no proceedings at law have been had nor any suit nor action commenced by or on behalf of complainant or any holder of any of the bonds of the said company, secured by the mortgage
135–69 aforesaid, for any interest unpaid or accrued thereon, or for any of said bonds, excepting this action.

And your intervenor avers, that the prayer of said complainant is that the mortgage aforesaid may be decreed to be a lien and mortgage upon all the property therein described, in favor of complainant and all other holders of the bonds aforesaid, and that the said railroad company may be decreed to pay unto the complainant and other bond-holders under said mortgage, all arrears of interest now due or that may hereafter become due and payable on said bonds, and also the principal of said bonds, together with all costs and expenses in this behalf incurred and expended, and in default thereof that all and singular the said mortgaged premises and property described in said act of mortgage, may be sold under a decree of this honorable court, and the proceeds of sale be applied to the payment of the bonds and coupons so as aforesaid held by complainant and by other *bona fide* holders, without discrimination or preference; that an account may be taken of the bonds secured by said mortgage and of the amount due on the said bonds for principal and interest, and that the names of the lawful holders thereof be ascertained; that a receiver may be appointed according to the course and practices of this honorable court with the usual powers of receivers in like cases, of all the property, equitable interest, things in action, effects, moneys, receipts and earnings, rights, privileges, franchises and immunities of the said railway company, and of all other property included in and covered by the mortgage aforesaid, and that defendant company be decreed to make such transfer or conveyance to such receiver, or to the purchasers of the said property at any sale as aforesaid, as may be necessary and proper to pay them or either of them, in possession and control of said property; that a writ of injunction issue against said company, directing, commanding, enjoining and restraining said company, its directors, officers, agents, attorneys and employees, from interfering with, transferring, selling, or disposing of any of the property mentioned in or covered by the said mortgage, and that complainant may have such further or other relief in the premises as the nature of the
135–70 case may require, and to this honorable court shall seem meet, and for subpœna to the defendant company.

And your intervenor avers, that he is the *bona-fide* holder and owner of (118) of said third mortgage land grant bonds of the Vicksburg, Shreveport & Pacific Railroad Company, of $1,000.00 each, payable in gold coin of the United States, on the 1st day of January, 1916, (68) thereof being numbered respectively, 455 to 522, inclusive; to each of which said (68) bonds, are attached (54) coupons, (4) thereof being for $15.00 each, maturing July 1st, 1889, January

1st, 1890, July 1st, 1890, and January 1st, 1891; (6) for $20.00 each, maturing July 1st, 1891, January 1st, 1892, July 1st, 1892. January 1st, 1893, July 1st, 1893, and January 1st, 1894; the remaining (44) coupons so attached are for $25.00 each, maturing semi-annually as aforesaid, beginning with July 1st, 1894; the remaining (50) of said bonds are numbered respectively, 1070 to 1119, inclusive, and attached to each of said (50) bonds are (33) coupons of $25.00 each, (21) thereof having been detached by the Central Trust Company, trustee, and (19) of said number without having been paid, before the same were given in exchange for income bonds of said railroad company; that only (2) coupons of $15.00 each have been paid on either of the aforesaid (118) bonds, and which said bonds are of the same issue and series, and secured by the same mortgage with those held and alleged on by complainant herein, and that he, the said intervenor, has an interest identical with complainant, whom he wishes to join in his own interest and behalf, and to that end it is desirable and necessary that he should intervene in said cause.

Your intervenor avers, that a written demand or request by the holders of 20 per cent. of the said bonds issued and now outstanding has not been made upon the trustee, the Central Trust Company, of New York, to take charge of and operate said railroad company, and to enforce payment of the bonds, principal and interest, by a sale of said railroad and premises covered by the mortgage aforesaid, for the reason that it has not been possible to secure the concurrence and co-operation of as much as 20 per cent. of the bonds outstanding, as required under the terms and provisions of the mortgage, and your intervenor is informed and believes,
135–71 that more than 80 per cent. of the outstanding bonds are held, owned and controlled *en bloc*, by the stockholders and owners of the said railroad, and of other railroads correlated and operated in conjunction with the defendant company, under the designation of the Queen and Crescent system, and that the said bonds so held have been and are manipulated in the interest of the said company, its stockholders and owners, and of the aforesaid correlated companies to the prejudice and injury of the minority bondholders; that the said trustee, the Central Trust Company, of the City of New York, said State, has and had no beneficial interest in the bonds, and therefore was inhibited by the terms of his trust, except as moved and required thereto by the instrument of his creation from taking possession of said railroad and the mortgaged premises, or provoking its sale for the benefit of the bondholders. That the said trustee, according to the latest annual report of the said railroad company, has in his hand, or should so have a large sum of money, derived from the sale of lands, which said money is dedicated by the terms of the mortgage, first, to the discharge of interest coupons; and your intervenor is informed and believes that the said trustee has diverted other large sums, so derived and dedicated to other purposes not warranted by the trust, and to the injury of the minority land grant bondholders, as afore-

said, and that in so doing it has acted on the advice of and in league and collusion with the majority bondholders, who also own and control the stock and first mortgage bonds of this said railroad company.

That the directors and officers of the said railroad company, immediately or shortly after the execution and issuance of the bonds herein alleged upon and the mortgage securing the same, and who were also holders of bonds of the same series with complainant and intervenor herein, fixed the price at which the bonds might be given in exchange for lands of the company at 60 cents on the dollar, and thereupon immediately disposed of such a proportion of their holdings as their several interests required, by exchanging the same for the best and most desirable of the said lands at the aforesaid price, and this, before and without notice of the price fixed having been communicated or made known to the other bondholders who were not directors and officers in said company, as equity and good conscience demanded; that subsequently the price of the bonds or their exchange value for lands was reduced to 40 cents on the dollar and latterly to 20 cents on the dollar, while the valuation or price of the lands owned by said company has been greatly increased, said matters and things, all of which have operated injuriously, unjustly, wrongfully and inequitably to intervenor, and to the great benefit and advantage of the directors and officers aforesaid, who were not only enabled to receive the maximum price for their bonds, but availed themselves of the knowledge possessed by virtue of their official positions, to acquire the most desirable and valuable lands belonging to said company, and at the minimum price or valuation.

135–72

Your intervenor further avers, that the said railroad company, through its president and secretary, acting under authority of the board of directors duly given, and, on or about the 16th day of August, 1881, issued 4000 first mortgage bonds of $1000.00 each, in gold coin of the United States, maturing January 1st, 1920, bearing 6 per cent. per annum interest, payable in gold semi-annually, on the first days of January and July in each and every year, and containing a provision that in case of default for the term of one hundred and eighty (180) days, in the payment of any of said interest, that the principal shall become due and payable, the payment of which first mortgage bonds was secured by a first mortgage upon the railroad then constructed and thereafter to be constructed, in favor of the Farmers Loan and Trust Company of New York, and upon all franchises acquired and to be acquired, upon the cars, locomotives, engines, machines, fixtures and effects of every kind, whatsoever, excepting all unsold lands which have been or which may hereafter be acquired under any acts of Congress of the United States, donating lands to the State of Louisiana, and heretofore granted to the Vicksburg, Shreveport & Texas Railroad Company, to aid in the construction of said railroad by the State of Louisiana, or which hereafter may be acquired by or granted to the Vicksburg,

Shreveport & Pacific Railroad Company, which mortgage
135–73 so executed was filed and recorded in Mortgage Book "Q" folios 405–406–407 *et seq.* of the records of Ouachita parish, Louisiana, the domicile of said company.

And your intervenor is informed and believes, and so believing avers, that more than 90% of the aforesaid first mortgage bonds, amounting to four millions of dollars, are held, owned and controlled *en bloc* by the stockholders and owners of said railroad, and whose interest in and connection with other roads, of which the defendant company forms a part, and some or all of whom have been and are drawing large salaries therefrom, have diverted, mismanaged and absorbed the earnings and assets of the said company to the great injury and detriment of intervenor and the other minority holders of the third mortgage land grant bonds.

Your intervenor further avers, that the said defendant company, on or about December —, 1885, through its president and secretary, duly authorized by a resolution of the board of directors, adopted November 25th, 1885, executed and issued one million, three hundred and twenty-three thousand ($1,323,000.00) dollars of mortgage bonds, of $1000.00 each, known as the first and best bonds, prior to all others, with the consent of the holders of 3894 of the 4000 first mortgage bonds above referred to, payable on November 1st, 1915, bearing 6% per annum interest, payable semi-annually, on the first days of May and November, in each and every year, and containing a provision, that in case of default for the term of one hundred and eighty (180) days in the payment of any of said interest, that the principal shall become due and payable when demanded by the stockholders of six hundred of said bonds, the payment thereof being secured by a first and prior mortgage on the railroad, cars, locomotives, depots and all other property of said company, except the lands hereto referred to as having been derived from congressional grants, through the State of Louisiana, said mortgage being in favor of the Central Trust Company, of New York, and on file and of record in Mortgage Book "S," folios 455 to 458, inclusive, of the recorder's office of Ouachita parish, Louisiana, and all of which

said bonds so issued and secured by the mortgage last
135–74 aforesaid, your intervenor is informed and believes, and so avers, are also held, owned and controlled *en bloc* by the stockholders and owners of the said railroad.

Wherefore, the premises considered, your intervenor prays for leave of court to become a party to and in said cause, for his own interests, as the same may appear, to all intents and purposes as if he had been an original party to the said bill; that he have an accounting from the said Central Trust Company, trustee, and from all the directors, officers, agents and employees of the said railroad company, who have received lands in exchange for bonds, to the injury of the minority holders of the land grant bonds aforesaid; that he have the same relief prayed for by the said complainant; that the said Central Trust Company and the Farmers Loan and

Trust Company, trustees, as aforesaid, which are non-residents of the State of Louisiana, be made parties hereto, according to the practice and procedure of this honorable court, and that the defendant company have notice of this intervention.

He prays for all necessary orders, and for general and equitable relief.

E. T. LAMKIN AND
W. F. MILLSAPS,
Solicitors for Intervenor.

Before me, the undersigned authority, personally came and appeared Rob't B. Blanks, who, after being duly sworn, deposes and says: He is the intervenor in the above and foregoing petition of intervention, the contents of which he has read, and that the allegations therein made, except those on information and belief, are true, and that as to those stated to be on information and belief, he believes them to be true.

ROBERT B. BLANKS.

Sworn to and subscribed before me on this April 23, A. D. 1900.

W. A. O'KELLY,
U. S. Commissioner.

Let this intervention be filed April 26, 1900.

ALECK BOARMAN, *Judge.*

(Endorsed: Henry D. Hearms *vs.* No. 215, Vicksburg, Shreveport and Pacific Railroad Company. Intervention by Rob't B. Blanks. U. S. circuit court, fifth circuit, western district of Louisiana, Filed April 30, 1900. J. B. Beattie, clerk. E. T. Lamkin and W. F. Millsaps, solicitors.)

135–75

Bill of Complaint. Filed May 1, 1900.

United States Circuit Court, Western District of Louisiana. In Equity.

CENTRAL TRUST COMPANY OF NEW YORK
vs.
VICKSBURG, SHREVEPORT & PACIFIC R. R. Co. } No. 217.

To the honorable the judges of the circuit court of the United States in and for the western district of Louisiana, sitting in Monroe, in equity:

The Central Trust Company of New York, a corporation duly created by and under the laws of the State of New York, and a citizen of the State of New York, having its principal office and place

of abode in the city of New York, brings this its bill of complaint against the Vicksburg, Shreveport and Pacific Railroad Company, a corporation organized and existing under the laws of the State of Louisiana, a citizen of the State of Louisiana, and an inhabitant of this district;

And thereupon your orator complains and says:

1. That your orator is a corporation duly created under the laws of the State of New York, and is a citizen of the State of New York as aforesaid, having its office and place of abode in the city of New York.

2. Your orator further avers, upon information and belief, that on and prior to the first day of January, 1886, and long prior thereto, defendant was a railroad corporation known as the Vicksburg, Shreveport and Pacific Railroad Company, which was created a body corporate by and existing under and by virtue of the laws of the State of Louisiana, and possessed of and endowed with powers, rights, privileges, franchises and immunities granted by the laws of said State and also by certain acts of Congress of the United States, and a citizen of the said State of Louisiana, within the meaning of the laws fixing and determining the jurisdiction of this honorable court.

135–76 3. That said Vicksburg, Shreveport & Pacific Railroad Company on January 1st, 1886, and long prior thereto, owned and operated a line of railway situated in the State of Louisiana and running from a point on the Mississippi river, nearly opposite the city of Vicksburg, and near to the town of Delta, in the State of Louisiana; thence, westward, through the northern part of Louisiana by way of Monroe, on the Ouachita river; thence to Shreveport, on the Red river; thence westward to the State line of Texas; and that it was likewise the owner of *certain unsold lands* which had been acquired by and granted to it by land grants and otherwise from the United States and from the said State of Louisiana. Said lands being known as *land grant lands*, said defendant company being in possession of full and descriptive lists and records of the location, description and quantity of said lands which remain unsold of its possession.

4. Your orator avers that on or about the 1st day of January, 1886, the said Vicksburg, Shreveport & Pacific Railroad Company, being thereunto duly authorized by its president, Frank S. Bond, and its secretary, Diedrich Graff, and under its private seal, made and executed its 2500 bonds of $1000 each, gold coin of the United States of America, aggregating $2,500,000.00, and the interest to accrue thereon in like gold coin, said bonds being known as the third mortgage & land grant bonds, being numbered consecutively from 1 to 2500, both numbers inclusive, and bearing date January 1st, 1886, by the terms of which bonds the said company promises to pay to the holder of each bond, or in case the same should be registered, then to the registered owner thereof, unless the last registration should have been to bearer thereof, the sum of one

thousand dollars, gold coin of the United States of America of the present coinage, at its agency in the city of New York, on the 1st day of January, 1916, with interest thereon in gold, beginning from the 1st of January, 1888, at the rate of 3% per annum for three years; for the following three years 4% per annum, and thereafter, at the rate of 5% per annum, payable semi-annually.

5. Your orator further avers, that on or about the first day of January, 1886, the said Vicksburg, Shreveport & Pacific
135–77 Railroad Company, being the owner of and being in possession of the line of railway and of the property hereinbefore described, in order to secure the payment of the principal and interest of the said issue of third mortgage and land grant bonds, as the same should mature, made, executed and delivered to your orator a certain deed or indenture of trust or mortgage, known as its "*Third mortgage on railroad and first mortgage on land grant lands;*" whereby it conveyed to your orator, as trustee, and to its lawful successors in said trust, the following described property, to-wit:

"All and singular said railroad of the party of the first part, constructed and hereinafter to be constructed and known as the Vicksburg, Shreveport and Pacific railroad (and formerly known as the Vicksburg, Shreveport and Texas railroad), and running from a point on the Mississippi river nearly opposite the city of Vicksburg, and near or at the town of Delta, in the State of Louisiana; thence westward through the northern part of Louisiana, by way of Monroe, on the Ouachita river; thence to Shreveport on the Red river; thence westward to the State line of Texas; and all and singular the immunities and franchises which may have been or may hereafter be acquired by said railroad company, and all rights of ways, lands, property, water stations, warehouse buildings, machine shops, structures and terminal improvements which have been or may hereafter be erected thereon, and all and singular the cars, locomotives, engines, wagons, machinery, fixtures, utensils and effects of every nature and description whatsoever in use or intended to be used upon the said railroad, or in any way attached or appertaining to the same, or which may hereafter be placed upon, or may become attached to the said railroad in any manner or for any purpose without any exception or reservation, including all the lands in any way acquired by said railroad company either by purchase, donation or otherwise, for any purpose, whether for right of way or depot grounds, *including all unsold lands which have been or which shall hereafter be acquired by or granted by land grant*, or otherwise, said mortgage being, as stipulated by said deed of trust, in effect a third mortgage on the railroad and appurtenances of the said de-
135–78 fendant company, and a first mortgage on the lands granted to the said defendant company.

And your orator further avers that a true and correct copy of said third mortgage on railroad and first mortgage on land grant lands is annexed to this petition of intervention, marked *Exhibit "A."*

And your orator prays that the same may be taken as a part of this bill of complaint as fully as if embodied herein.

6. And your orator further shows that in order to secure the full and effectual payment and redemption of each and all of said bonds and the coupons thereto attached, when the same shall become due and payable, the said railroad company, in consequence of the several authorizations hereinbefore stated and shown in said deed of trust, granted in favor of your orator, its successors or assigns, as well as in favor of any and every person or persons who might be or become the holder or holders of said bonds and coupons or any of them, a mortgage lien and privilege upon all and singular the railroad property, immunities, franchises and lands and land grant lands mentioned and described in said deed of trust, as being thereby intended to be mortgaged.

7. And your orator further avers that the execution of said third mortgage on railroad and first mortgage on land grant bonds, to secure the payment of said issue of bonds was duly authorized by the board of directors of the said railroad company at a meeting held on the 27th day of November, 1885; and that said mortgage and deed of trust was duly executed, acknowledged and recorded, as required by law.

8. And your orator further avers that it was provided and covenanted in and by said mortgage and deed of trust, that of the bonds authorized to be issued as aforesaid, and when issued to be secured by the provisions of this mortgage, none of such bonds should be obligatory upon said railroad company until the certificate endorsed thereon should be signed by said trustee.

And your orator further avers that by reason of the covenants and provisions of said mortgage and deed of trust and under the authority therein granted, said railroad company has made,
135–79 executed, issued and delivered after certification by your orator, as trustee under said mortgage, its bonds numbered from one to twenty-five hundred, both numbers inclusive, amounting in the aggregate to $2,500,000.00, of which there are now actually outstanding $1,820,750.00 thereof; the remainder of said bonds having been received as provided in said mortgage and deed of trust, in part payment of the price of lands sold and retired and cancelled by your orator, as trustee, aforesaid, and that said $1,820,750.00 of said bonds are now outstanding in the hands of *bona fide* holders thereof.

And your orator shows that the said $1,820,750.00 of the said third mortgage on railroad and first mortgage on land grant lands, bonds now outstanding, $1,364,000.00 thereof are held and owned and duly registered in the name of the Alabama, New Orleans, Texas & Pacific Junction Railways Company, Ltd.

And your orator avers that the remaining $456,750.00 of said mortgage bonds are held and registered in the name of sundry persons other than said Alabama, New Orleans, Texas & Pacific Junction Railways Company, Ltd.

9. And your orator further avers, as appears by said act of mortgage and deed of trust, that on said $1,820,750.00 of said outstanding bonds of said mortgage, it was stipulated that the payment of interest was not to commence thereon until the first of January, 1888, and that 3 per cent. per annum, payable semi-annually, was to be paid as interest on said bonds for the three years next ensuing after said first day of January, 1888; 4 per cent. interest for the three years next ensuing; and 5 per cent. thereafter. All said interest being payable semi-annually.

And your orator avers that the two first interest coupons have been paid, taken up and cancelled, and that no other interest, whatsoever, has been paid upon any of the remaining interest coupons and that all of the same are due and unpaid since July 1st, 1889.

And your orator further avers that default was made in the payment of the said interest on said bonds semi-annually, since the first day of July, 1899, up to the present time.

That said Vicksburg, Shreveport & Pacific Railroad Company wholly failed, omitted and refused to pay the said instal-
135–80 ments and to pay the interest mentioned and provided for in the said coupons due, as above, or upon any of them, but therein wholly made default, and that notwithstanding the large amount of interest which had become due, as aforesaid, semi-annually since July 1st, 1889, no instalment and no part thereof has, in spite of due demand, ever been paid to any of the holders of said bonds outstanding, as aforesaid.

10. And your orator further avers that it is provided in said mortgage and deed of trust, that if said railroad company should, at any time, make default in the payment of any interest falling due upon said bonds or any of them secured or intended to be secured thereby and such default should continue for the space of 365 days, that the principal of the said bonds should thereupon become due and payable; anything contained in the said bonds and in the said mortgage or deed of trust to the contrary notwithstanding; and that, thereupon, your orator, upon the written request of at least 20 % of the then outstanding bonds so in default, should foreclose said mortgage in any court having jurisdiction in the premises, and have said railroad, mortgaged premises, immunities and franchises, and said land grant lands and all benefit and equity of redemption as aforesaid, sold by decree of said court and in such manner as is provided by law.

And your orator further avers that the holders of $1,364,000.00 of said mortgage bonds, now actually outstanding, have in writing requested your orator to enforce the remedy provided in said mortgage or deed of trust.

11. And your orator further avers that it is informed and believes that said railroad company is insolvent and unable to pay its indebtedness; and that said railroad is insufficient and inadequate security even for the payment of the outstanding bonds secured by several mortgages granted by defendant; and enjoying priority upon

said railroad over your orator's said mortgage; and that said lands are insufficient and inadequate security for the payment of the bonds secured by your orator's said mortgage.

12. Your orator further avers that the Farmers Loan and Trust Company, a body corporate, organized under the laws of
135–81 the State of New York, and hereinbefore filed a bill of complaint in this honorable court against the defendant, The Vicksburg, Shreveport and Pacific Railroad Company, wherein it seeks, as trustee, to foreclose a certain first mortgage upon the railroad of the defendant company, and wherein it has obtained an injunction, and has had appointed by this honorable court a receiver of said railroad, and of all the property of said defendant; that J. H. McCormick, the receiver so appointed by this honorable court, has duly qualified and filed his bond, and taken his oath as receiver, and is in possession of the railroad and of all the other property of defendant in the State of Louisiana; that your orator, in the interest of a harmonious and economical administration of the property of the defendant corporation, under one management, desires that said receivership, ordered at the suit of said Farmers Loan and Trust Company, should be extended so as to cover this cause, and expressly appointing said McCormick as receiver under this bill of complaint, with directions to keep separate accounts of said lands so mortgaged to your orator, and of all receipts from and disbursements incurred in and about the same, and to retain the proceeds of the sale or rental of said lands, or of any other moneys from them received, in an account separate from the other moneys to be received by him in the course of his administration, and subject to the orders of this honorable court.

13. And your orator further avers, that no proceedings at law have been had nor any suit or action commenced by or on behalf of this orator for the collection of said mortgage debt or any part thereof, save only this suit.

In consideration whereof, and for as much as your orator is remediless in the premises by the rules of the common law, and can have adequate relief only in a court of equity, where matters of this nature are properly cognizable and relievable; to the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief hereby prayed, and that they may separately and severally answer make (but not under oath, their answer under oath being hereby expressly waived), according to the best of their knowledge, information and belief, to all the
135–82 matters and charges aforesaid, and that as fully in every respect as if the same were here again repeated and they thereunto particularly interrogated; that your orator be placed in possession of the mortgaged premises personally, or that a receiver may be appointed in this cause of all and singular the rights, franchises and property, of every name and nature of the said defendant, The Vicksburg, Shreveport and Pacific Railroad Company, with power and authority to operate said railroad and carry on the busi-

ness of said mortgagor company under the protection of this court, with all the usual powers and duties of receivers in such cases, and with authority to proceed to recover, by suit or otherwise, all property in the hands of other parties belonging to the said mortgagor company and all moneys justly do to it and unlawfully withheld by any person on any pretense whatever; that an injunction may issue out of this court, restraining and enjoining the said mortgagor company and all and every its agents and servants, from in any way interfering with the possession or control of the property of the said mortgagor company under the control of said receiver, and from selling, transferring, conveying, leasing, or otherwise disposing of or incumbering any of the property, rights or franchises, of the said mortgagor company; that all the rights and franchises, and all the property, real and personal, of the said mortgagor company may be declared subject to the lien of the said mortgage or deed of trust; that an account may be taken of the amounts due upon the bonds secured by the said mortgage or deed of trust and now outstanding, with interest thereon; that the amount so found due may be found to be the first lien on the property of the said mortgagor company, according to the terms of the said mortgage or deed of trust; that the said mortgagor company may be decreed to pay the amounts so found to be due upon said bonds and the coupons thereto, for interest or principal or both; that in default thereof, all the property and franchises of the said mortgagor company may be sold under a decree of this court and according to law and the practice of this court, to satisfy the amount so found due; that out of the proceeds of said sale, or the net earnings while in the hands of said receiver so to be appointed, there may be paid,

first, the costs and expenses of your orator in this
135–83 suit, including proper attorneys', solicitors' and counsel fees, with a proper compensation to your orator for its own services as trustee, to be allowed by the court, and that the residue thereof may be applied to the payment of the amount due upon the said mortgage bonds and the coupons thereto, with interest thereon; that if there be any surplus, it may be applied in such way as this court may direct; that all the defendants in this suit may be barred of and from any equity of redemption of and in the said property and franchises; and that any deficiency on such sale may be entered in this cause as a judgment against the said mortgagor company: That James H. McCormick, who has heretofore been appointed as receiver of all the property of the defendant company as aforesaid, be appointed as receiver of said railroad and land grants in this cause; also that instructions be given to said receiver to keep separate accounts of said lands so mortgaged to your orator, and of all receipts from and disbursements incurred in and about the same, and to retain the proceeds of the sale or rental of said lands, or of any other moneys from them received, in an account separate from the other moneys to be received by him in the course of his administration, and subject to the orders of this honorable court, and that

your orator may have such other and further relief in the premises as the circumstances of the case may require and as may be agreeable to equity; may it please your honors to grant unto your orator a writ of subpœna issued out of and under the seal of this honorable court, directed to the defendants, The Vicksburg, Shreveport and Pacific Railroad Company, defendant herein, commanding it on a day certain therein to be named, and under a certain penalty to be and appear before this honorable court, then and there to answer (but not under oath, its answer under oath being hereby expressly waived) all and singular the premises, and to stand to, perform and abide by the orders, directions and decrees of this honorable court in the premises, and as shall seem meet and agreeable to equity and good conscience.

And your orator, as in duty bound, will forever pray, etc.

FARRAR, JONAS & KRUTTSCHNITT,
BUTLER, NOTMAN, JOLINE & MYNDERSE,
Solictors and of Counsel for Complainant.

135–84 UNITED STATES OF AMERICA,
Fifth Circuit, Western District of Louisiana.

Ernest B. Kruttschnitt, being duly sworn, says that he is one of the solicitors and of counsel for The Central Trust Company of New York, the orator in the foregoing bill of complaint, and knows the contents thereof; that the allegations therein contained, as far as they relate to his own acts, are true, and that as far as they relate to the acts of others, he believes them to be true. That in regard to all matters and things in the foregoing bill of complaint which are not within the personal knowledge of this deponent, this deponent has been fully informed, and believes them to be true.

E. B. KRUTTSCHNITT.

Sworn to and subscribed before me this 1st day of May, 1900.

WM. A. BELL,
Notary Public.

(Endorsed: No. 217. United States circuit court, western district of Louisiana, In equity. Central Trust Company of New York *vs.* Vicksburg, Shreveport and Pacific Railroad Company. Bill of complaint. File this bill of date May 1st, 1900. Don A. Pardee, circuit judge. Filed May 1st, 1900. J. B. Beattie, clerk. Farrar, Jonas & Kruttschnitt, solicitors for complainant. Hennen building, rooms 801–808, New Orleans.)

Order. Filed May 1, 1900.

United States Circuit Court, Fifth Circuit, Western District of Louisiana, at Shreveport.

CENTRAL TRUST COMPANY
vs.
VICKSBURG, SHREVEPORT & PACIFIC R. R. Co. } No. 217.

This cause came on this day to be heard at chambers, on the application of the complainant for the appointment of a receiver; Farrar, Jonas & Kruttschnitt, solicitors for the complainant, and F. P. Stubbs, solicitor for the defendant; and the court considering the said bill and the proceedings heretofore had in this cause, in the case of The Farmers Loan and Trust Company *versus* The Vicksburg, Shreveport and Pacific Railroad Company:

135–85 It is ordered, adjudged and decreed, that J. H. McCormick, heretofore appointed receiver of the defendant's property in the aforesaid cause, be appointed receiver under this bill, with all the powers and duties conferred upon him by the order appointing him receiver in the said cause of The Farmers Loan and Trust Company *vs.* The Vicksburg, Shreveport and Pacific Railroad Company; with special directions to keep a separate account of the lands mortgaged to the Central Trust Company, and of all receipts from and disbursements incurred in and about the same and to retain the proceeds of the sale or rental of said lands, or of any other moneys from them received, in an account separate from the other moneys to be received by him in his administration, subject to the orders of this court:

It is further ordered, adjudged and decreed, that the said J. H. McCormick be relieved of the necessity of giving any other or further bond, of taking any other or further oath than those already given and taken as receiver in the aforementioned cause in which he was appointed receiver of the defendant's property.

The clerk will file this order of date May 1st, 1900.

DON A. PARDEE,
Circuit Judge.

(Endorsed: No. 217. United States circuit court, fifth circuit, western district of Louisiana. Central Trust Company of New York *vs.* The Vicksburg, Shreveport & Pacific Railroad Company. Order. Filed May 1st, 1900. J. B. Beattie, clerk.)

Subpœna in Chancery.

UNITED STATES OF AMERICA:

Circuit Court United States, Fifth Circuit, Western District of Louisiana.

THE CENTRAL TRUST COMPANY
vs.
VICKSBURG, SHREVEPORT & PACIFIC R. R. Co. } No. 217.

Original.

The President of the United States to the marshal for the western district of Louisiana, Greeting:

You are hereby commanded to summon the Vicksburg, Shreveport and Pacific Railroad Company, Monroe, Ouachita parish, Louisiana, through Honorable F. P. Stubbs, general agent and attorney for said Vicksburg, Shreveport and Pacific Railroad Company at Monroe, Ouachita parish, Louisiana, to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden at the city of Monroe, Louisiana, on the first Monday of June, A. D. 1900, then and there to answer a bill in chancery, filed against the Vicksburg, Shreveport and Pacific R. R. Co., wherein The Central Trust Company of New York is complainant, and said The Vicksburg, Shreveport and Pacific Railroad Company is defendant. 135–86

Herein fail not, and have you then and there this writ, with your endorsement thereon, how you have executed the same.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, [SEAL.] at the city of Shreveport, Louisiana, this 3rd day of May, in the year of our Lord one thousand nine hundred, and the 124th year of American Independence.

J. B. BEATTIE, *Clerk.*

The defendant is hereby notified that it is required to enter its appearance in the clerk's office of the United States circuit court, at Monroe, Louisiana, on or before the first Monday of June, A. D. 1900, otherwise the bill may be taken *pro confesso.*

J. B. BEATTIE, *Clerk.*

Marshal's Return.

Received in office at Monroe, La., on the 4th day of May, 1900, and on the 5th day of same month and year I made personal service

by leaving a certified copy of within subpœna in chancery in the hands of Mr. F. P. Stubbs, general agent and attorney for said Vicksburg, Shreveport & Pacific Railroad Company, at Monroe, Ouachita parish, Louisiana.

W. C. FARRINGTON,
Deputy U. S. Marshal, Western District of Louisiana.

135–87 (Endorsed: Original. United States circuit court, fifth circuit, western district of Louisiana. No. 217. The Central Trust Company *vs.* Vicksburg, Shreveport and Pacific Railroad Company. Subpœna in chancery. Filed May 7th, 1900. J. B. Beattie, clerk.)

Petition and Order. Filed May 4, 1900.

U. S. Circuit Court, Fifth Circuit, Western District of Louisiana, at Shreveport.

CENTRAL TRUST COMPANY OF NEW YORK
vs.
VICKSBURG, SHREVEPORT & PACIFIC RAILROAD CO. } No. 217.

To the honorable the judges of said court:

The petition of The Central Trust Company of New York, complainant in this cause, with due respect showeth:

That heretofore, on April 2nd, 1900, Henry D. Hearns, of Illinois, alleging himself to be the holder and owner of seventy-eight bonds of the defendant railroad company secured by a mortgage granted to your pteitioner as trustee, dated January 1st, 1886, filed his bill in this honorable court in his own behalf and in behalf of all others similarly situated, asking the foreclosure of said mortgage and the appointment of a receiver of the property of the defendant company:

That no order has been entered upon said bill save and except an order upon defendant to show cause on the first Monday in May, 1900, why a receiver should not be appointed, and in the meantime restraining defendant from selling or disposing of any of their lands and from making any change in the status of their railway:

That heretofore, on or about April 26th, 1900, the Farmers Loan and Trust Company of New York filed its bill in equity in this honorable court, to foreclose a certain first mortgage granted to it as trustee by defendant, and to have a receiver appointed of all the property of the defendant company.

That on said bill, after due hearing, this honorable court entered an order appointing J. H. McCormick as receiver of all the property, rights and franchises of the defendant company; that
135–88 said McCormick has qualified as receiver and is now in possession and control of said property under the orders of this honorable court.

That your petitioner has also filed a bill in equity in this honorable court in its capacity as trustee of the mortgage granted to it by the defendant company on January 1st, 1886, and covering its railroad land grants and other property and franchises seeking the foreclosure of said mortgage and the appointment of a receiver of the property of the defendant company.

That upon said bill this honorable court has entered an order appointing the said McCormick receiver of the property of the defendant company, and directing the extension of the receivership in the said cause of The Farmers Loan and Trust Company *vs.* The Vicksburg, Shreveport and Pacific Railroad Company over this cause.

That all of the three said bills are against the same defendant; that two of them are based upon the same cause of action and the same mortgage; that they all seek relief by the appointment of a receiver; and that the interest of justice and the convenience of the litigants require that these causes should be consolidated, so that the property should be under one management in the interest of all parties concerned, and that the litigation should be terminated by one decree settling and determining the rights of all the parties in and to the property of the defendant;

Wherefore, your petitioner prays that the Farmers Loan and Trust Company, the Vicksburg, Shreveport and Pacific Railroad Company, and Henry D. Hearms, through their respective solicitors of record, be ordered to show cause before your honors, on a day to be fixed, why the said three causes of Henry D. Hearms *vs.* The Vicksburg, Shreveport and Pacific Railroad Company, Farmers Loan and Trust Company, The Central Trust Company *vs.* The Vicksburg, Shreveport and Pacific Railroad Company, should not be consolidated under such style and number and with such arrangement of the parties as their interests and claims may require; and petitioner prays for all further and equitable orders in the premises and for general relief.

FARRAR, JONAS & KRUTTSCHNITT,
BUTLER, NOTMAN, JOLINE & MYNDERSE,
Solicitors and of Counsel for Complainant,
The Central Trust Company of New York.

135–89 STATE OF LOUISIANA, }
Parish of Orleans. }

Ernest B. Kruttschnitt, being duly sworn, deposes and says, that he is solicitor for the complainant, The Central Trust Company of New York, who is now absent from this circuit, and that all the averments in the foregoing petition are true to the best of his knowledge, information and belief.

E. B. KRUTTSCHNITT.

Sworn to and subscribed to before me this 1st day of May, 1900.

WM. A. BELL,
Notary Public.

[SEAL.]

Order.

Considering the foregoing petition and affidavit thereto annexed, it is ordered that the Farmers Loan and Trust Company, the Vicksburg, Shreveport and Pacific Railroad Company and Henry D. Hearms, do show cause before me at New Orleans, La., on Thursday of the tenth day of May, 1900, at eleven o'clock a. m., or as soon thereafter as counsel can be heard, why the prayer of the foregoing petition should not be granted, and why the causes now pending in this court and described in the prayer of said petition should not be consolidated under such style and number, and with such arrangement of the parties *of* their interests and claims may require;

It is further ordered, that the Farmers Loan and Trust Company, Vicksburg, Shreveport and Pacific Railroad Company and Henry D. Hearms, be duly notified hereof by service of a copy of this order and of said petition upon them, unless they waive or acknowledge same.

May 3rd, 1900.

DON A. PARDEE,
Circuit Judge.

Service accepted:

FARMERS LOAN & TRUST CO.,
By TURNER, McCLURE & ROLSTON, *Solic.*
HARRY H. HALL, *Of Counsel.*
THE V., S. & P. R. R. CO.,
By FRANK P. STUBBS, *Gen'l Att'y.*

135–90 (Endorsed: No. 217. United States circuit court, fifth circuit, western district of Louisiana, at Shreveport. Central Trust Company of New York *vs.* Shreveport, Vicksburg and Pacific Railroad Company. Petition and order. Filed May 4th, 1900. J. B. Beattie, clerk. Farrar, Jonas & Kruttschnitt, Butler, Notman, Joline, Mynderse, solicitors for plaintiff. Hennen building, rooms 801–808, New Orleans.)

Certified Copy of Petition and Order. Filed May 7, 1900.

U. S. Circuit Court, Fifth Circuit, Western District of Louisiana, at Shreveport.

CENTRAL TRUST COMPANY OF NEW YORK
vs.
VICKSBURG, SHREVEPORT & PACIFIC R. R. Co. } No. 217.

To the honorable the judges of said court:

The petition of The Central Trust Company of New York, complainant in this cause, with due respect showeth:

That heretofore, on April 2d, 1900, Henry D. Hearms, of Illinois,

alleging himself to be the holder and owner of seventy-eight bonds of the defendant railway company secured by a mortgage granted to your petitioner as trustee, dated January 1st, 1886, filed his bill in this honorable court in his own behalf and in behalf of all others similarly situated, asking the foreclosure of said mortgage and the appointment of a receiver of the property of the defendant company.

That no order has been entered upon said bill save and except an order upon the defendant to show cause on the first Monday in May, 1900, why a receiver should not be appointed, and in the meantime restraining the defendant from selling or disposing of any of their lands and from making any change in the status of their railway.

That heretofore, on or about April 26, 1900, the Farmers Loan and Trust Company of New York filed its bill in equity in this honorable court, to foreclose a certain first mortgage granted to it as trustee by the defendant, and to have a receiver appointed of all the property of the defendant company.

135–91 That on said bill, after due hearing, this honorable court entered an order appointing J. H. McCormick as receiver of all the property, rights and franchises of the defendant company; that said McCormick has qualified as receiver and is now in possession and control of said property under the orders of this honorable court.

That your petitioner has also filed a bill in equity in this honorable court in its capacity as trustee of the mortgage granted to it by the defendant company on January 1st, 1886, and covering its railroads, land grants and other property and franchises, seeking the foreclosure of said mortgage and the appointment of a receiver of the property of the defendant company.

That upon said bill this honorable court has entered an order appointing the said McCormick receiver of the property of the defendant company, and directing the extension of the receivership in the said cause of The Farmers Loan & Trust Company *vs.* The Vicksburg Shreveport and Pacific Railroad Company over this cause.

That all of the said three bills are against the same defendant; that two of them are based upon the same cause of action and the same mortgage; that they all seek relief by the appointment of a receiver; and that the interest of justice and the convenience of the litigants require that these causes should be consolidated, so that the property should be under one management in the interest of all parties concerned, and that the litigation should be terminated by one decree settling and determining the rights of all the parties in and to the property of the defendant.

Wherefore, your petitioner prays that the Farmers Loan and Trust Company, the Vicksburg, Shreveport and Pacific Railroad Company and Henry D. Hearns, through their respective solicitors of record, be ordered to show cause before your honors, on a day to be fixed, why the said three causes of Henry D. Hearns *vs.* The Vicksburg,

Shreveport and Pacific Railroad Company, Farmers Loan & Trust Company *vs.* The Vicksburg, Shreveport and Pacific Railroad Company, and Central Trust Company *vs.* The Vicksburg, Shreveport and Pacific Railroad Company should not be consolidated under such style and number and with such arrangement of the
135–92 parties as their interest and claims may require; and petitioner prays for all further and equitable orders in the premises and for general relief.

(Signed)
FARRAR, JONAS & KRUTTSCHNITT AND
BUTLER, NOTMAN, JOLINE & MYNDERSE,
Solicitors and of Counsel for Complainant,
The Central Trust Company of New York.

STATE OF LOUISIANA, }
Parish of Orleans. }

Ernest B. Kruttschnitt, being duly sworn, deposes and says, that he is solicitor for the complainant, The Central Trust Company of New York, who is now absent from this circuit, and that all the averments in the foregoing petition are true to the best of his knowledge, information and belief.

(Signed) E. B. KRUTTSCHNITT.

Sworn to and subscribed before me this 1st day of May, 1900.

(Signed) WM. A. BELL,
Notary Public.

Order.

Considering the foregoing petition and affidavit thereto annexed:

It is ordered, that the Farmers Loan and Trust Company, the Vicksburg, Shreveport and Pacific Railroad Company and Henry D. Hearms, do show cause before me at New Orleans, La., on Thursday, the tenth day of May, 1900, at eleven o'clock, a. m., or as soon thereafter as counsel can be heard, why the prayer of the foregoing petition should not be granted, and why the causes now pending in this court and described in the prayer of said petition should not be consolidated under such style and number and with such arrangement of the parties as their interest and claims may require:

It is further ordered, that the said Farmers Loan and Trust Company, Vicksburg, Shreveport and Pacific Railroad Company and Henry D. Hearms, be duly notified hereof by service of a copy of this order and of said petition upon them, unless they waive or acknowledge same.

May 3d, 1900.

(Signed) DON A. PARDEE,
Circuit Judge.

135–93 Filed May 4th, 1900.
A true copy,
Attest: J. B. BEATTIE, *Clerk.*
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Marshal's Return.

Received in office at Shreveport, La., on the 5th day of May, 1900, and on the 7th day of the same month and year, I made personal service by leaving a certified copy of within copy of petition and order in the hands of Mr. A. H. Leonard, attorney for Henry D. Hearms, at his office in the city of Shreveport, Louisiana.

A. H. BERNSTEIN,
Deputy Marshal.

(Endorsed: No. 217. United States circuit court, 5th circuit, western district of Louisiana. Central Trust Company of New York *vs.* Vicksburg, Shreveport and Pacific Railroad Company. Certified copy of petition and order. Filed May 7th, 1900. J. B. Beattie, clerk.)

Plea and Answer. Filed May 7th, 1900.

U. S. Circuit Court, Western District of Louisiana, Monroe Division.

HENRY DENHARDT HEARMS
vs.
VICKSBURG, SHREVEPORT & PACIFIC R. R. Co. } No. 215.

The *plea* of the Vicksburg, Shreveport and Pacific Railroad Company, a corporation duly authorized under the laws of the State of Louisiana, a citizen of said State, domiciled in the town of Monroe, defendant, to part, and the *answer* of the same defendant to the residue, of the bill of complaint of David Denhardt Hearms, plaintiff.

This defendant, to all relief sought by the said bill, does *plead in bar* and for *plea* saith:

That subsequently to the filing of this bill of complaint, to-wit: on the 21st of April, 1900, his honor, A. P. McCormick, one of the circuit judges of this circuit, sitting in and for the said western district of Louisiana, entertained and took cognizance and jurisdiction of a certain bill of complaint therein filed by the Farmers
135–94 Loan and Trust Company, trustee, of the first mortgage bonds of this defendant (and by which said bill of complaint, said trustee prays to foreclose said mortgage, for an injunction and the appointment of a receiver for all the property of the said defendant); and that upon the written request of the holders of $5,992,000.00 of the first mortgage bonds and interest of this defendant; of $1,364,000.00 of the land grant bonds of said company; of $494,860.00 of the income bonds of this defendant, and of $1,601,500.00 of the capital stock of this defendant, *appointed J. H.*

McCormick, Esq., receiver of all of the property of the said Vicksburg, Shreveport and Pacific Railroad Company, defendant herein, and which appointment was intended by Judge Pardee to the land grant land on application of Central Trust Company, trustee, of the third mortgage bonds, and first mortgage of land grant bonds in this court, number 217, May 1, 1900.

That said receiver has duly qualified by filing bond and taking his oath of office, and has been put in actual possession of the railroad and of all of the other property, movable and immovable, of this defendant.

And this defendant for plea saith: That the appointment of said receiver is a bar to the application made in the within suit for a receiver, and is a bar to the entire proceedings of foreclosure herein, and that this proceeding should be dismissed and the parties referred, for the protection of their rights, to said receivership proceedings of The Farmers Loan & Trust Company *vs.* The Vicksburg, Shreveport & Pacific Railroad Company, No. 216, of the docket of this court, and of The Central Trust Company *vs.* V. S. & P. R. R. Co., No. 217 of its docket.

All of which matters and things this defendant does aver to be true, and does plead the same in bar to the whole of the said bill; and this defendant humbly prays for judgment of this honorable court, whether he ought to be compelled to make any further or other answer to so much of said bill as is hereby pleaded to, and he prays to be hence dismissed with his costs.

And as to the residue of said bill, this defendant, not waiving his said plea, but relying thereon, and saving and reserving unto itself all and all manner of benefit or exception which can or
135–95 may be had or taken to the many errors, uncertainities and imperfections in the said bill of complaint, for *answer* unto the said bill or unto so much thereof as this defendant is advised it is material or necessary for it to make answer unto, answering saith:

1. This defendant admits that complainant is a citizen of the State of Illinois, and that this defendant is a corporation created under and by virtue of the laws of the State of Louisiana, and is a citizen of this State; and that on or about the 1st of January, 1886, it issued $2,500,000 third mortgage and land grant bonds, being 2500 of $1000 each, as set forth in said bill of complaint. These bonds were issued for:

Refunding $1,406,000.00 of common stock at 25c.....	$351,500.00
Refunding $3,500,000 of 6% income bonds at 50c.....	1,750,000.00
For payment of first mortgage bond, interest.....	398,500.00
	$2,500,000.00

2. This defendant admits that, as averred in said bill of complaint, this defendant, in order to secure the payment of said bonds, granted a mortgage upon the property of said railroad company, as set out in said bill of complaint.

This defendant avers the fact to have been that said third mortgage was subject and inferior to a prior lien mortgage upon the property of said company for $1,323,000.00, executed and issued in 1885, and a first mortgage of $4,000,000.00, executed and issued on the first of July 1881, which said first mortgage, with accrued interest, amounts to approximatively, $6,500,000.00.

3. This defendant admits that it is stipulated in said third mortgage that said interest coupons should be promptly paid, and that if default in payment thereof should continue for the space of 365 days, the principal of said bonds should thereupon become due and payable; but this defendant, further answering, avers, that it is, in said mortgage or deed of trust, expressly stipulated or contracted that this defendant should have the right "*to retain the free use,*

135–96 *enjoyment, possession and management of the railroad and premises hereby mortgaged, or intended so to be, and the earnings thereof, until by reason of default of the party of the first part, in paying the interest or principal of said bonds, or any of them, as hereafter provided for, or in keeping and performing its covenants and engagements or some of them herein contained, the party of the second part shall be authorized, as hereinafter provided, to enter upon and take possession of, or sell the said railroad, lands and premises as hereinafter set forth.*"

Further answering, this defendant avers that, in said mortgage or deed of trust, the *only method thereinafter provided* for the holders of said bonds to enter upon and take possession of or sell the said railroad, lands and premises, was and is, upon the continuing default for the space of 365 days in the payment of the interest of said bonds or any of them, *for the Central Trust Company, the trustee* named in said deed of trust or mortgage, *upon the written request of the holders of at least 20 per cent. of the then outstanding bonds to either enter* upon the property and hold and manage the same, or sell the same without process of court, or *proceed to foreclose said mortgage in a court of competent jurisdiction.*

And this defendant further answers that, not only has complainant not shown that 20 per cent. of the outstanding bonds have joined in this, his application, but the fact and truth is that of $1,760,750.00 of said bonds, $1,363,000.00 have intervened in the above mentioned suit of the Farmers Loan & Trust Company, and have joined in the prayer of the first mortgage creditors for the appointment of a receiver in that case and have filed a bill to foreclose said mortgage by the Central Trust Company, at whose instance a receiver has been appointed.

And this defendant, further answering, says that complainant has no right to an independent action of foreclosure, unless and except upon the refusal of the trustee to act, which is not averred, and which is not the case.

4. This defendant admits that this mortgage is a third mortgage upon the railroad and appurtenances, and a first mortgage upon the land grant lands of this defendant, and that the prop-

135–97 erty mortgaged is in value inadequate and insufficient to pay the entire mortgage debts resting thereon.

5. This defendant admits that, in and by said mortgage, it is provided that this defendant may, from time to time, sell said lands free from the lien of the mortgage, upon the payment of the proceeds, as received by said Central Trust Company, and they shall be applied, *first*, to the coupons attached to the said bonds; and 2nd, to the creation of a sinking fund for the redemption of said bonds. This defendant says that the proceeds of land sales have been insufficient to pay the coupons as they matured and that, therefore, there has been no sinking fund created with which to purchase bonds as set out in said bill of complaint.

6. This defendant admits that, in and by said mortgage, it is provided that said company will, on or before the 2nd Wednesday of September, in each and every year, until all of said bonds are sold, fix a price at which bonds thereby secured may, at the option of the holder, be used instead of cash in the purchase of such lands; and that upon such use of any of the said bonds, the same are to be surrendered to the said Central Trust Company, trustee, to be cancelled.

7. This defendant admits that said act contains the pact of non-alienation and imports a confession of judgment; but it denies that the incorporation into this deed of trust or mortgage of certain provisions of the Louisiana mortgage, can, in any manner, be held to impair or modify the provisions and conditions of said mortgage or deed of trust.

8. The defendant, not knowing the fact, does not admit that complainant is the holder of and owner of 78 of said bonds, numbered from 309 to 338, inclusive, 391 to 404, inclusive; 420 to 438, inclusive, and of bond No. 1010, but it is informed and verily believes that said bonds were purchased for about ten cents on the dollar, solely for the purpose of instituting this proceeding and of annoying and harassing this defendant and not for any just or proper cause or purpose;

And further answering, it avers that it has good reason
135–98 to believe and does believe that complainant in this suit is a substituted person without any real or true interest in this proceeding;

And further answering, defendant denies that the bonds as described aggregate, as is averred in said bill of complaint, *seventy-eight* bonds, averring the fact and truth to be that all of the bonds enumerated in this bill of complaint only amount to *sixty-four* bonds.

9. This defendant admits that it has defaulted in the payment of the interest falling due on said bonds, and that said default has continued for more than 365 days.

10. This defendant denies that among the lands granted to it and mortgaged to secure said third mortgage and land grant bonds, there were, as averred, at the date of this mortgage, 420,924 acres of land donated by the United States to the State of Louisiana, and by said State granted to this defendant, as set out in the said bill,

This defendant averring the fact to be that there were granted to it by said State of Louisiana only 363,472.75 acres, of which lands 542.51 acres had been entered under homestead laws; 9,970.91 acres were sold by the Vicksburg, Shreveport & Texas R. R.; 3,139.11 acres by the N. La. & Texas R. R., as per affidavit annexed of F. Y. Anderson, marked Ex. "A."

This defendant denies that it appears from the *fifteenth annual report* for the year ending June 30th, 1899, that it has disposed of 173,203.24 acres of said lands, it averring the fact and truth to be that the number of acres thus disposed of, as shown by said report, was 159,550.71 acres. The difference between this number and the number averred in the said bill of complaint, to-wit: 13,652.53, were either sold by the Vicksburg, Shreveport and Texas Railroad Company, or lost by entries made prior to said land grants and prior to the date of the issuance of said third mortgage bonds, and the granting of said mortgage and deed of trust, and that only 50,632.44 acres were sold in fee simple and 108,918.27 acres of surface right claims.

11. And defendant admits that in the sale of said 159,550.71 acres of said lands, it has accepted in payment of a portion of the said lands, $679,250.00 in bonds, and $83,412.50 in coupons, 135–99 leaving outstanding on June 30th, 1899, bonds to the amount of $1,820,750.00 with coupons thereto attached.

This defendant admits that it had, remaining unsold, on June 30th, 1899, 190,269.51 acres of granted lands, but it denies, as is averred in said bill of complaint, that nearly one-half of said lands have been disposed of and that the proceeds of said sales have been paid over to the holders of about one-fourth of said bonds, leaving only about one-half of said lands as security for the remaining of said bonds.

On the contrary, this defendant avers the truth and fact to be that the entire cash proceeds of the sale of said lands, less the expenses of said sales, has been equitably divided among the holders of all of the outstanding bonds, said proceeds having been used by the said trustee, the Central Trust Company, for the redemption of coupons numbers 1 and 2.

And defendant, further answering, says: That if any of the said bondholders have derived any further or additional consideration or benefit for the said bonds, they have only done so by availing themselves of the right open to all of the bondholders, of purchasing lands with the said bonds, as provided in the said act of mortgage.

12. This defendant admits that said lands were, under said mortgage, the common pledge and security of the holders of all of said third mortgage bonds, and that the proceeds arising from the sale of said lands should be equally apportioned to each of said bonds, and paid over to the holders of the same.

This defendant, further answering, says that it paid over said proceeds to said Central Trust Company, trustee, in strict conformity with the terms and provisions of said mortgage or deed of trust, and

that said trustee has equally apportioned and paid over to all the holders of said bonds, said proceeds thus reserved by it.

And, further answering, defendant says that the above provision for equitable distribution of said proceeds of sale, was specially modified by the provision contained in article 9 of said deed of trust, or act of mortgage, to the effect that each bondholder might, at his option, use any of said bonds instead of cash in the pur-
135–100 chase of said lands, at a price to be regularly fixed therefor, and that this option was open to all, and that many availed themselves of the same.

13. This defendant denies positively and emphatically that it has, either through its directors and officers, or in any other manner, in distributing the proceeds of sale of the said lands, given an unjust and unfair or illegal preference to any of the holders of said bonds, and that it is not true, as averred, that such preference was given to any of its directors or officers;

And it denies that it has paid to any of the holders of said bonds, whether officers of this defendant or other persons not connected with it, any interest coupons, while failing or refusing to pay such coupons to complainant, or to other holders of said bonds and coupons.

This defendant averring the fact to be that it has never in any manner, shape or form, directly or indirectly, disbursed any of the proceeds of said land sales or paid any of said coupons, it averring the fact and truth to be that, acting strictly in conformity with the requirements of said provisions of said deed of trust and mortgage, it has paid to the Central Trust Company, trustee, thereunder, and to no other person or corporation said proceeds of sale, and that said trustee, alone, has disbursed and distributed said proceeds among the bondholders, the said proceeds of sale having been used solely in the redemption of coupons numbers 1 and 2 of said land grant bonds, all of which coupons were either paid, after due notice, upon presentation, or if an insignificant number thereof remain unpaid, they will be paid upon presentation to said trustee.

14. Defendant denies that complainant will be injured irreparably, or in any manner whatsoever, by this defendant, its directors or officers, averring that the allegation that it will give a preference, or has given such preference to some holders of the said bonds, while leaving other holders of said bonds, including complainant, without any payment whatever, and without security—to be untrue and without the slightest foundation in fact.

15. This defendant admits that, under said deed of trust
135–101 and mortgage, it was provided that the proceeds of said lands sales should be paid over to the Central Trust Company, as averred, and it admits that as is shown by the statement and report of its directors, the sum of $113,905.54 has been received by defendant as entire cash proceeds of said sales of lands.

And defendant, further answering, says that there should be added to this sum a further sum of $9754.94, being the interest on deferred payments under said sales.

Defendant admits that these amounts would have been more than sufficient to pay three of the coupons on each of said bonds, but for the fact that the just and proper expenses for the sales of the said lands were properly deducted therefrom; defendant averring the fact to be that the cost and expenses of effecting the said land sales, during the 13½ years, wherein the sales produced said sum of $113,905.54, exceeded the sum of $40,000.00, leaving only as net proceeds, $63,900.90, which was remitted to the Central Trust Company as required by said deed of trust and mortgage.

Defendant denies that this sum, say $40,000.00, should have been applied to the payment of the coupons aforesaid, or that it has been diverted by this defendant, or illegally and inequitably withheld from the owners of said bonds; it averring the truth and self-evident fact to be that it was impossible to effect the sales of any of said lands in question, without paying commissions and incurring necessary and proper expenses therefor.

And defendant avers that its administration of said lands and the sales thereof, were eminently just and reasonable and proper; that no expense was incurred in said sales which should have been avoided and the same result obtained.

16. This defendant admits that it is insolvent as averred.

17. This defendant denies that its directors and officers have been, or are so administering its affairs and business as to largely increase its indebtedness, and it denies that under their direction and control the said company has become insolvent and the value of its road and other property greatly depreciated; defendant averring the fact to be that said administration has been wise and beneficial in every sense of the word, and that if said company has not been able to bear the burden of its debt and pay the interest thereon, it has been simply by reason of the lack of business received, notwithstanding all due and diligent effort of its said officers; and this defendant avers that the physical condition of its road has been improved under said administration, and that the property was never in as good condition or as well maintained as it is at the present time, as will appear by statement of earnings and expenses attached and made part hereof, as Ex. "B."

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18. Defendant denies that its said officers have been guilty of any act of maladministration, averring that said charge is untrue and wanton and without the slightest foundation.

And this defendant answers that its said officers and directors have constantly received and now have the full approval in the management of this property of the following holders of its obligations:

Prior lien bonds	$1,323,000 00
First mortgage bonds	3,692,000 00
Interest thereon, about	2,300,000 00
Third mortgage and land grant bonds	1,364,000 00
Income bonds	494,860 00
Stock	1,594,000 00

And this defendant avers the truth and fact to be that the first and only criticism that its said directors and officers have been subjected to is the unwarrantable charge made in this bill of complaint by the holder of $64,000.00 of the third mortgage bonds of this company, which were purchased within the last eight months, ten cents on the dollar, ostensibly, and, this defendant truly believes, for the purpose of attempting to appoint and control a receiver, and in consequence of the repeated unsuccessful efforts made to induce the officers of this company to give an undue and an unjust advantage to the purchaser of said bonds.

19. This defendant denies that it owes a large floating
135–103 debt or any floating debt, or any current and presently accruing indebtedness, or that there is great danger of the institution of any suit, unless it be of the fictitious character of this instant proceeding.

20. This defendant admits that complainant has instituted no suit at law against this defendant. It denies that complainant is entitled to a writ of injunction, or that he has been or can be in any possible manner injured by the administration of the affairs of this defendant.

And your defendant denies that said complainant is entitled to any of the relief asked for in his said bill of complaint, all of which matters and things the said defendant is ready to aver, maintain and prove, as this honorable court shall direct, and humbly prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

THE VICKSBURG, SHREVEPORT & PACIFIC R. R. CO.,
By C. C. HARVEY, *President.*

I hereby certify that the foregoing plea is, in my opinion, well founded in point of law.

FRANK P. STUBBS,
Solicitor for Defendant.

C. C. Harvey, being sworn, deposes and says, I am the president of the above named defendant. The foregoing plea and answer are true in point of fact and are not interposed for delay. So much of the foregoing plea and answer as concerns my own acts and deeds is true and the remainder of said answer is true to the best of my knowledge; and so much thereof as concerns the acts and deeds of any other person or persons, I believe to be true.

C. C. HARVEY.

Sworn to before me this 4th day of May, 1900.

PURNELL M. MILNER,
Notary Public.

(Endorsed: No. 215. U. S. circuit court, west. dist. of La. H. D. Hearms *vs.* V. S. & P. R. R. Co. Plea and answer. Filed May 7th, 1900. J. B. Beattie, clerk. F. P. Stubbs, gen'l att'y sol.)

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135–104 EXHIBIT "A." Annexed to Plea and Answer. Filed May 7, 1900.

H. D. HEARMS
vs.
VICKSBURG, SHREVEPORT & PACIFIC R. R. Co. } No. 215.

UNITED STATES OF AMERICA,
Southern Division of the Northern District of Alabama.

Personally appeared before me, C. J. Allison, clerk of the United States circuit court for the southern division of the northern district of Alabama, Frank Y. Anderson, known to me, who, being duly sworn, deposes and says that he is now the land commissioner of the Vicksburg, Shreveport and Pacific railroad, and held that position on the 30th day of June, 1899; that the headquarters of the land department of the said railroad are in his offices at Birmingham, Alabama, where all the records of said department and the Government certified lists for the lands are on file; that, according to said lists, there have been certified, up to the 30th day of June, 1899, by the United States Government to the State of Louisiana, for and on behalf of the following railroads:

The Vicksburg, Shreveport and Texas railroad:

List 1	60,434.62	acres
" 2	17,390.81	"
" 3	17,244.24	"
" 4	5,583.09	"
Total	100,652.76	

The North Louisiana and Texas railroad:

List 1	60,434.62	acres
" 2	17,390.81	"
" 3	17,244.24	"
" 4	5,583.09	"
Total	100,652.76	

135–105 The Vicksburg, Shreveport and Texas railroad:

List 5	153,259.82	acres
" 6	46,311.49	"
" 7	52,849.70	"
" 8	101,077.20	"
Total	353,498.21	

The Vicksburg, Shreveport and Pacific railroad:

List 9.....	2,954.04 acres
" 10.....	5,826.34 "
Total.....	8,780.38

Deponent further states that the lands in lists 1, 2, 3 and 4, certified to the Vicksburg, Shreveport and Texas Railroad Company, were re-certified and are the same lands conveyed by the Government to the State in lists 1, 2, 3 and 4, for the North Louisiana and Texas Railroad Company, and that the lands which appear in lists 1, 2, 3 and 4, certified to the State on behalf of the Vicksburg, Shreveport & Texas Railroad Company, and in lists 1, 2, 3 and 4, certified to the State on behalf of the North Louisiana & Texas Railroad Company, were again re-certified in lists 5, 6, 7 and 8, which were conveyed by the Government to the State for the use of the Vicksburg, Shreveport & Texas Railroad Company; consequently, the last lists, to-wit: 5, 6, 7, 8, 9 and 10, show all the lands that were ever received from the Government on behalf of the Vicksburg, Shreveport & Texas Railroad Company, the North Louisiana & Texas Railroad Company, and the Vicksburg, Shreveport & Pacific Railroad Company, amounting to 362,278.59 acres. To this should be added 1194.16 acres, being acreage gained by counting a sixteenth part of a section as forty acres, this being the manner in which the company sells its lands, making the grand total of lands received from the United States Government, up to the 30th day of June, 1899, 363,472.75 acres. Of these lands, however, the certified lists fail to convey the title to 542.51 acres, for the reason that said 542.51 acres had been entered under the homestead laws, and the entrymen proved up their claims and the same have been allowed by the Government, hence this number of acres was a loss to the railroad.

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Deponent further states that the records also disclose that 9970.91 acres were sold by the Vicksburg, Shreveport & Texas Railroad Company, and that 3139.11 acres were sold by the North Louisiana & Texas Railroad Company, prior to the organization of the Vicksburg, Shreveport & Pacific Railroad Company, and that, since the organization of the Vicksburg, Shreveport & Pacific Railroad Company, and up to the 30th day of June, 1899, there have been sold 50,632,44 acres in fee simple and 108,918.27 acres of surface rights only, the mineral rights and mining privileges being reserved to the company, and that, on the 30th day of June, 1899, there still remained in the company's hands, subject to sale, 190,269.51 acres of fee simple and 108,918.27 acres of mineral rights.

Deponent further states that the lands in lists 9 and 10, amounting to 8,780.38 acres, were obtained by the Vicksburg, Shreveport & Pacific Railroad Company, from the United States Government, since the date of the execution of the mortgage known as third

mortgage on its railroad and first mortgage on land grant lands, dated May 4, 1886.

Deponent further states that there are 11,871.62 acres of land which have been selected by him, as the agent of the State of Louisiana, for and on behalf of the Vicksburg, Shreveport & Pacific Railroad Company, for which certified lists have not yet been acquired from the Government.

FRANK Y. ANDERSON.

Sworn to and subscribed before me this 21st day of April, 1900.

CHAS. J. ALLISON,
Clerk of the United States Court for the Southern Division of the Northern District of Alabama.

(Endorsed: No. 215. Exhibit "A." Annexed to plea and answer. H. D. Hearms *vs.* Vicksburg, Shreveport and Pacific R. R. Co. Filed May 7th, 1900. J. B. Beattie, clerk.)

135–107 *Petition and Order to Complete Sales. Filed May 7, 1900.*

U. S. Circuit Court, Western District of Louisiana.

H. D. HEARMS
vs.
VICKSBURG, SHREVEPORT & PACIFIC R. R. Co. } No. 215.

To the Honl. Alex Boarman, judge of the United States district court for the western district of Louisiana:

The petition of the Vicksburg, Shreveport & Pacific Railroad Company, represented herein by Frank P. Stubbs, as agent and attorney-in-fact, respectfully shows, that in the month of March last past, sales of the granted lands of said company were made as hereinafter set forth, and the titles therefor transmitted to me, Frank P. Stubbs, in the usual course of business, as in all transactions of this character, to be consummated through the said Frank P. Stubbs, agent, who receives the price for the company and delivers the deeds to the purchasers.

That as soon as the deeds are received, the purchasers are notified to appear at the office of the company, and complete the transaction as above set forth; that notices were duly sent during the month of March to each purchaser, but for some laches of their own, they failed to appear and demand their deeds until after the 5th day of April inst., when, in the meantime, the restraining order against the disposition of its granted lands has been rendered by your honor, on the petition of H. D. Hearms *vs.* Vicksburg, Shreveport & Pacific Railroad Company.

That said sales were as follows:

Forty (40) acres of land in section twenty-three, township eighteen, north of range one west, in the parish of Lincoln, to T. J. Norris, for the price of one hundred and twenty ($120.00) dollars.

One thousand and eighty (1080) acres in sections seventeen, nineteen, twenty-nine and thirty-three in township sixteen, range 1 east, and in section one, township sixteen, range two east, in the parish of Jackson, to Peter Kuntz, for the price of three thousand two hundred and forty ($3240.00) dollars.

And 3rd, sixteen hundred and eighty (1680) acres of land in the parish of Jackson, being in section three, township 15 N.
135–108 R. 4 W., and in section seven, township sixteen, north of range three west; in sections one, three and eleven in township sixteen, north of range four west, for the price of five thousand eight hundred and eighty ($5880.00) dollars, to the South Arkansas Lumber Company.

Petitioner further shows that immediately after the service of the said order, the said purchasers demanded their titles, and tendered the price to petitioner; but petitioner, notwithstanding the said sales were complete, desiring to conform to the letter of the court's order, declined to deliver the deeds or receive the price; and now submits the matter in each case to your honor, for direction in the premises, and prays for an order authorizing its said agent and attorney to complete said transactions, in justice to the purchasers, who had entered into possession of the property pending the perfection of their offer to purchase, and before the order of court aforesaid was made.

Petitioner finally prays for general relief.

FRANK P. STUBBS,
Agent and Attorney-in-fact.

Order.

The foregoing petition considered, it is ordered that the Vicksburg, Shreveport and Pacific Railroad Company, through its agent and attorney-in-fact, be authorized to complete the transactions above set forth, to-wit: The sale to T. J. Norris of forty acres of land in Lincoln parish; the sale to Peter Kuntz of one thousand and eighty acres of land in Jackson parish; and to the South Arkansas Lumber Company of sixteen hundred and eighty acres of land in Jackson parish.

Done and signed in chambers this 24th day of April, 1900.

ALECK BOARMAN, *Judge.*

(Endorsed: No. 215. U. S. circuit court, western district of Louisiana. H. D. Hearms *vs.* Vicksburg, Shreveport & Pacific R. R. Co. Petition and order to complete sales. Filed May 7th, 1900. J. B. Beattie, clerk.)

135–109 *Answer to Rule to Show Cause, etc. Filed May* 8, 1900.

United States Circuit Court, Fifth Circuit, Western District of Louisiana.

CENTRAL TRUST COMPANY OF NEW YORK
vs.
VICKSBURG, SHREVEPORT & PACIFIC R. R. Co. } No. 217.

To the honorable judges of said court:

Now comes Henry D. Hearms, the complainant in the cause of Henry D. Hearms *vs.* Vicksburg, Shreveport & Pacific Railroad Co., pending in this honorable court, and for answer to the order granted and rendered on May 3d, 1900, to your appearer to show cause on Thursday, the 10th day of May, 1900, at New Orleans, La., why his own cause, as aforesaid, and the other causes pending in this court, to-wit: that of Farmers Loan & Trust Company and of the Central Trust Company, both of New York, against the same defendant company, should not be consolidated, showeth:

That the Farmers Loan & Trust Company have no bill or other proceeding pending in this court properly cognizable by a court of equity; that the allegations and averments contained in the application for the appointment of a receiver, and in the answer to the said application, made and filed by the said Vicksburg, Shreveport & Pacific Railroad Company, present no matter within the jurisdiction and cognizance of this honorable court, and that the appointment of J. H. McCormick, receiver of said company, is void for the want of a proper bill to support the same.

Further answering, your appearer shows, that the proceedings instituted by and in behalf of the Central Trust Company to foreclose its mortgage against the said Vicksburg, Shreveport & Pacific Railroad Co., and for the appointment of a receiver, were irregularly and improperly had and taken, inasmuch as another bill, to-wit., the bill of your complainant, had been filed and was pending in this honorable court, to the knowledge of the said Central Trust Company, for the same purpose and upon the same cause of action, by parties capable in law of instituting, prosecuting and maintaining same, to-wit., your appearer, and by intervention, Robert B. Blanks, long before the filing of the said bill of the said
135–110 Central Trust Company, and that an order of this honorable court had been made and rendered, also to the knowledge of the said Central Trust Company, making it, the said Central Trust Company, a party to the said last mentioned bill.

Wherefore, the premises considered, your appearer prays, that the motion of the said Central Trust Company be denied, and for general and equitable relief. And for further cause the said Hearms shows that he desires to control, as far as a complainant may con-

trol, proceedings in his suit against the V. S. & P. R. R. Co., to the end that he may obtain the relief he seeks therein and thereby. That a consolidation of his cause with the other causes mentioned in motion to consolidate will delay and hinder him in obtaining justice. That the suit of the Farmers Loan & Trust Company and the Central Trust Company against the Vicksburg, Shreveport & Pacific Railroad Company are collusive suits instituted by those corporations, and the said railroad company, for the purpose of hindering, harassing and delaying him in his efforts to enforce payment of the bonds due him by said railroad Co.

LEONARD & RANDOLPH,
Counsel for H. D. Hearms.

United States Circuit Court, Fifth Circuit, Western District of Louisiana.

CENTRAL TRUST COMPANY OF NEW YORK
vs.
VICKSBURG, SHREVEPORT AND PACIFIC R. R. Co. } No. 217.

To the honorable judges of said court:

Now comes Rob't B. Blanks, intervenor in the cause entitled "Henry D. Hearms *vs.* Vicksburg, Shreveport & Pacific Railroad Company," and adopts as his own the averments and prayer of the foregoing answer.

E. T. LAMKIN,
Solicitor for Intvr.
W. F. MILLSAPS, *Of Counsel.*

(Endorsed: No. 217. Central Trust Co. *vs.* V., S. & P. R. R. Co. Answer to rule to show cause, etc. Filed May 8th, 1900. W. A. O'Kelly, d'y clerk.)

135–111 *Motion to Vacate Appointment of Receiver. Filed May 8, 1900.*

United States Circuit Court, Fifth Circuit, Western District of Louisiana, Monroe Division.

FARMERS LOAN & TRUST CO., Trustee,
vs.
VICKSBURG, SHREVEPORT & PACIFIC R. R. Co. } No. 216.

To the honorable the judges of said court:

Now comes Henry D. Hearms, a citizen of the State of Illinois, who moves the court to vacate the decree and order of this honor-

able court, in so far as a receiver of the defendant company is appointed thereby.

Petitioner avers that on the 3rd day of April, A. D. 1900, he filed in this honorable court his bill of complaint against the defendant company, said cause being entitled, "Henry D. Hearms *vs.* Vicksburg, Shreveport and Pacific Railroad Company," and numbered "215" on the docket thereof, and which is referred to and made a part hereof. That in and by said bill, a receiver was prayed for, and that thereupon the Honorable Aleck Boarman, judge of the western district of Louisiana, took jurisdiction of said bill, fixed the hearing of the application for a receiver, for the first Monday in May following, at Shreveport, La., and meanwhile restrained the defendant company from selling or disposing of the lands, and from making any change in the then status of the said railway, other than may be neces-ary in the proper operation of the same. That said order was duly served on the defendant company on April 4th, A. D. 1900. That subsequently, on or about April 28th, 1900, Rob't B. Blanks, a citizen of the State of Louisiana, with leave of the court, intervened in said cause so instituted by petitioner, which intervention is by reference hereto and annexed and made a part hereof.

Petitioner avers, that long after the filing of his said bill of complaint, and the rendition of the order therein, as aforesaid, by the Honorable Aleck Boarman, judge, and on or about April 23, 1900, an application by Farmers Loan & Trust Company, trustee, was presented to Hon. A. P. McCormick, associate judge of the circuit court of appeals, together with the answer and request of the defendant company, and of the Alabama, New Orleans, Texas &
135–112 Pacific Junction Railways Company, "Limited," of London, who thereupon appointed Jos. H. McCormick receiver of defendant company.

Petitioner avers, that said appointment was improvidently made, and should be vacated for the following reasons:

First. Because pending the bill and application for a receiver, so as aforesaid fixed for hearing by the Hon. Aleck Boarman, no appointment should have been made *ex parte* by any other judge.

Second. Because your petitioner was, and is deeply interested in the appointment of such receiver, and in having an impartial person selected as receiver, and that no appointment of a receiver should have been made, pending his application, without notice to him.

Third. Because the said Jos. H. McCormick was appointed receiver upon the application of Farmers Loan & Trust Co., trustee, under another and a different mortgage, and not embracing all of the property affected by the mortgage which your petitioner and intervenor seek to foreclose, and by virtue of said appointment, the said receiver has gone into possession of property unaffected by the mortgage, in favor of said Farmers Loan & Trust Co., trustee, which application was concurred in by the Vicksburg, Shreveport & Pacific Railroad Company, and the Alabama, New Orleans, Texas & Pacific

Junction Railways Company, "Ltd.," the latter company being the holder of the stock *en bloc* of the said defendant company, and of nearly all the bonds and other obligations and liabilities.

Fourth. Because the said appointment was made upon a mere collusive application, unaccompanied by any bill praying for any ultimate relief within the jurisdiction and competency of this honorable court to grant; that said application was made for the purpose of anticipating and forestalling the relief to which your petitioner was, and is legally entitled, as shown by his bill of complaint, as aforesaid.

Fifth. Because the appointment of the said Jos. H. McCormick, as receiver, was collusively applied for and obtained by the said parties, for the purpose of continuing indefinitely in control and
135-113 management of the said defendant company, the officers, of whose acts and doings, petitioner and intervenor complain and charge with having grossly mismanaged its affairs, and illegally diverted its earnings and trust fund to their advantage and benefit, and to the great injury and loss of petitioner, intervenor and the other minority bondholders.

Sixth. Because the interest of the parties applying for and assenting to the appointment of the said Jos. H. McCormick, receiver, are identical, the relation of creditor and debtor having no existence in equity, your petitioner and intervenor being the only real creditors of the defendant company, who have as yet made themselves parties to these proceedings and invoked the relief of this honorable court in their behalf.

The said Vicksburg, Shreveport & Pacific Railroad Company, being controlled and operated by trustees and officers selected by said Alabama, New Orleans, Texas & Pacific Junction Railways Company, "Ltd.," and the said Farmers Loan & Trust Company, and also the Central Trust Company of New York, being controlled and influenced and in collusion with the aforesaid Railways Company, "Ltd.," as set forth in the said intervention of the said Rob't B. Blanks, the interest of the said parties being identical, and their action in applying for and obtaining the appointment of the said receiver, being in reality the action of the said Vicksburg, Shreveport & Pacific Railroad Company.

Petitioner avers, that the said Alabama, New Orleans, Texas & Pacific Junction Railways Company, "Ltd.," has for years controlled the said Vicksburg, Shreveport & Pacific Railroad Co., and has succeeded in inducing the said Farmers Loan & Trust Co., also the Central Trust Company, to act with it, and has thus been able to injure and oppress your petitioner and other holders of the few bonds not held by the said Railways Company, "Ltd.," and as set forth in the bill of complaint filed by your petitioner, and in the intervention of the said Blanks.

Petitioner avers, that for the protection of his rights and interests, and of the other minority bondholders, some person other than the

person so as aforesaid selected by the said Alabama, New
135–114 Orleans, Texas & Pacific Junction Railways Company, "Ltd.," The Farmers Loan & Trust Company, the Central Trust Company and the Vicksburg, Shreveport & Pacific Railroad Company, all of whom, being in collusion, should be appointed receiver of the defendant company.

He avers that he fears and believes that the affairs of said railroad company, under the direction of the receiver so as aforesaid selected, will be managed and controlled in the interests of said Alabama, New Orleans, Texas & Pacific Junction Railways Company, "Ltd.," the owner holder of practically all the obligations and liabilities of said company, and to the injury and loss of your petitioner and other holders of the few bonds not held by the Alabama, New Orleans, Texas & Pacific Junction Railways Company "Ltd."

For these reasons and others to be hereafter advanced, petitioner prays that the appointment of the said Jos. H. McCormick, receiver, of defendant company, be vacated, and for full, equitable and general relief.

LEONARD & RANDOLPH,
Counsel for H. D. Hearms, Petitioner.

United States Circuit Court, Fifth Circuit, Western District of Louisiana, Monroe Division.

FARMERS LOAN & TRUST CO., Trustee,
vs.
VICKSBURG, SHREVEPORT & PACIFIC R. R. CO. } No. 216.

To the honorable the judges of said court:

Now comes Rob't B. Blanks, a citizen of the State of Louisiana, and intervenor in the cause entitled "Henry D. Hearms *vs.* Vicksburg, Shreveport and Pacific Railroad Co." and numbered 215 on the docket of this honorable court, and who adopts and concurs in the allegations and prayer made and contained in the above and foregoing petition and motion, by the said H'y D. Hearms.

E. T. LAMKIN,
Solicitor for Intervenor.
W. F. MILLSAPS,
Of Counsel for Intervenor.

Filed May 8th, 1900.

J. B. BEATTIE, *Clerk.*

135–115 (Endorsed: No. 216. U. S. circuit court, western district of Louisiana. Farmers Loan and Trust Co. *vs.* Vicksburg, Shreveport and Pacific Railroad Company. Motion to vacate appointment of receiver. Filed May 8, 1900. J. B. Beattie, clerk.)

Order to Consolidate Causes. Filed May 12, 1900.

United States Circuit Court in and for the Fifth Judicial Circuit and Western District of Louisiana.

FARMERS LOAN & TRUST COMPANY, Trustee,
vs.
VICKSBURG, SHREVEPORT & PACIFIC R. R. Co. } No. 216. In Equity.

H. D. HEARMS
vs.
VICKSBURG, SHREVEPORT & PACIFIC R. R. Co. } No. 215. In Equity.

CENTRAL TRUST COMPANY OF NEW YORK
vs.
VICKSBURG, SHREVEPORT & PACIFIC R. R. Co. } No. 217. In Equity.

This cause came on to be heard on the petition of The Central Trust Company, of New York, complainant, praying that these causes be consolidated, and was argued by counsel, and thereupon, upon consideration thereof:

It was ordered, adjudged and decreed, and the court doth order, adjudge and decree, as follows.

First. That all these causes be consolidated into one cause, under the name and style of The Farmers Loan and Trust Company, trustee, complainant, *vs.* The Vicksburg, Shreveport and Pacific Railroad Company *et al.*, defendants, No. 216 of the docket.

Second. That The Farmers Loan and Trust Company, as trustee, do stand in said consolidated cause as complainant, and that The Central Trust Company, of New York, trustee, The Vicksburg, Shreveport and Pacific Railroad Company, H. D. Hearms, and Robert B. Blanks, do stand as defendants to said bill.

135-116 Third. That the bill of the Central Trust Company do stand as a cross-bill against the Farmers Loan and Trust Company and the Vicksburg, Shreveport and Pacific Railroad Company.

Fourth. That the bill of H. D. Hearms do stand as a cross-bill against the Central Trust Company, the Farmers Loan and Trust Company and against the Vicksburg, Shreveport and Pacific Railroad Company.

Fifth. That the petition of intervention of Robert B. Blanks do stand as a cross-bill against the Central Trust Company, the Farmers Loan and Trust Company and the Vicksburg, Shreveport and Pacific Railroad Company.

Sixth. That all of the parties to this consolidated cause have leave to amend their bills, if they be advised that the same is necessary or proper to present the issues that may arise between the parties; said

amendments to be made by the rule day in June, on or before which rule day, all the parties shall also enter their appearances as defendants to any bills as to which they have been made defendants, by this order, or otherwise.

Seventh. That in case any one or more of the bills filed by the complainants in said causes hereby consolidated be finally dismissed, the remaining bill or bills shall continue to stand as a bill in said consolidated cause.

A. P. McCORMICK,
Circuit Judge.

Approved:
H. H. H.

May 11, 1900.

[SEAL.] Filed May 12th, 1900.

J. B. BEATTIE, *Clerk.*

(Endorsed: United States circuit court, fifth judicial circuit, and western district of Louisiana. No. 216. In equity. Farmers Loan and Trust Company, trustee, *vs.* Vicksburg, Shreveport and Pacific Railroad Company. No. 215. In equity. H. D. Hearms *vs.* Vicksburg, Shreveport and Pacific Railroad Company. No. 217. In equity. Central Trust Company of New York *vs.* Vicksburg, Shreveport & Pacific Railroad Company. Order to consolidate causes. Filed May 12th, 1900. J. B. Beattie, clerk.)

135–117 *Petition to Print Record. Filed May* 16, 1900.

U. S. Circuit Court, Fifth Circuit, Western District of Louisiana.

FARMERS LOAN & TRUST COMPANY
vs.
VICKSBURG, SHREVEPORT & PACIFIC R. R. Co. } No. 216.

To the honorable the judges of said court:

The petition of J. H. McCormick, receiver, with respect represents:

That for the purpose of facilitating the proper dispatch of these proceedings and of the business of this receiver, it is necessary and proper that there should be made a certified transcript of all the proceedings herein and that the same should be printed for the use of the court and all parties of interest in this receivership.

Wherefore, your petitioner prays that he be authorized to order from the clerk of the court a duly certified transcript of all the proceedings herein, and that he be authorized to have printed in pamphlet form (50) fifty copies of said proceedings, and that he be further authorized to print, from time to time, in like pamphlet

form, a true and correct copy of such further proceedings, orders and decrees as may be taken, had or rendered herein, and for all general relief.

N. O. May —, 1900.

HARRY H. HALL, *Sol.*

In the Consolidated Case No. 216.

FARMERS' LOAN & TRUST COMPANY
vs.
VICKSBURG, SHREVEPORT & PACIFIC RAILROAD CO. and Others.

The foregoing petition being considered, it is thereon and hereby Ordered, that the clerk of the circuit court for the western district of Louisiana shall at once make a full transcript of all the papers filed in either of the cases now embraced in this consolidated case, in the due order of time in which such papers were filed, and of all the orders and decrees heretofore passed in either
135–118 of said cases prior to the consolidation, and in this consolidated case since the consolidation, in the like due order of the dates on which each of said orders and decrees was passed, including this application and this order thereon; and shall duly authenticate the said transcript by his proper certificate and seal, making only one certificate cover the transcript of papers and orders up to this date filed, and shall deliver one copy only of the same with all reasonable despatch to the receiver in this case; and shall hereafter from time to time as applications are made and proceedings had in this consolidated case upon which any order of the court is passed, immediately upon the passing of such order of the court, prepare a transcript of such application and proceedings thereon and the order passed thereon, and authenticate the same by his single certificate under seal, and furnish one copy only thereof to the receiver in this case; and, upon such certified transcripts being delivered to the receiver, it shall be his duty, and he is hereby required, to promptly cause the same to be accurately printed as certified, including the clerk's certificate and a proper mark with the letters "[L. S.]" to designate the seal, and in uniform octavo style suitable for binding, fifty copies thereof, which the receiver shall distribute to the judges of the circuit court for the western district of Louisiana each at least one copy, and to the solicitors of record for those persons who are now or may hereafter become parties of record to this consolidated cause, to each of such solicitors of record at least two copies, and such larger number whenever the same may be required and duly requested, as shall leave a reasonable supply for the use of the receiver and his solicitors.

May 14, 1900.

A. P. McCORMICK,
Circuit Judge.

(Endorsed: U. S. circuit court, western district of La., No. 216. Farmers Loan & Trust Company *vs.* Vicksburg, Shreveport & Pacific Railroad Company. Petition to print record. Filed May 16, 1900. J. B. Beattie, clerk. H. H. Hall, sol'r.)

135–119 *Petition of J. H. McCormick, Receiver, to be Authorized to Retain Counsel. Filed May 16, 1900.*

U. S. Circuit Court, Fifth Circuit, Western District of Louisiana.

FARMERS LOAN & TRUST CO., Complainant,
vs.
THE VICKSBURG, SHREVEPORT & PACIFIC R. R. Company, Defendant. } No. 216. In Equity.

To the honorable judges of said court:

The petition of J. H. McCormick, receiver, with respect represents:

That it is necessary and proper that he should have counsel to advise him in the matter of the receivership and that he desires to be authorized by the court to appoint such counsel.

Wherefore he prays that he be authorized to retain, as his counsel and solicitor, Mr. Harry H. Hall, and for all general relief.

J. H. McCORMICK,
Receiver, V., S. & P. R. R. Co.

Order.

Considering the prayer of the foregoing petition and the necessity that the receiver, J. H. McCormick, Esq., should be represented by counsel, he is hereby authorized to employ Mr. Harry H. Hall as his counsel and solicitor in the matter of the within receivership, in so far as concerns the property covered by the first mortgage.

A. P. McCORMICK,
Circuit Judge.

May 14, 1900.

We, the undersigned, have no objection to this appointment, and submit the matter to the court.

New Orleans, May 12th, 1900.

FARRAR, JONAS & KRUTTSCHNITT,
Solicitors for Central Trust Co.

F. P. STUBBS,
By H., *Solicitor for V., S. & P. R. R. Co.*

ALABAMA, NEW ORLEANS, TEXAS & PACIFIC JUNCTION RYS. CO., LTD.,
By C. C. HARVEY,

135-120 (Endorsed: No. 216. U. S. circuit court, fifth circuit, western district of Louisiana. Farmers Loan and Trust Company *vs.* Vicksburg, Shreveport & Pacific Railroad Company. Petition of J. H. McCormick, receiver, to be authorized to retain counsel. Filed May 16th, 1900. J. B. Beattie, clerk.)

Petition to Appoint Counsel. Filed May 16, 1900.

United States Circuit Court, Fifth Circuit, Western District of Louisiana.

FARMERS LOAN & TRUST COMPANY
vs.
VICKSBURG, SHREVEPORT & PACIFIC R. R. Co. } No. 216.

The petition of J. H. McCormick, receiver, with respect represents:

That in so far as his receivership herein has been extended, as per special decree, to the land grant lands under the third mortgage on railroad and the first mortgage on land grant lands, it is proper, in view of an alleged conflict of interest between the holders of these third mortgage bonds and the holders of the first mortgage bonds, that your petitioner should, as receiver of said land grant lands, be authorized to employ counsel other than the counsel representing him as receiver of the railroad property, under the bill of the trustee of the first mortgage.

Your petitioner avers, that the Alabama, New Orleans, Texas & Pacific Junction Railways Company, Ltd., the holder of $1,364,000.00 of said third mortgage bonds, has suggested, in view of the averments in the bill herein of H. D. Hearns, their willingness that the solicitor of said Hearns, Mr. A. H. Leonard, be selected by petitioner as his said counsel, and that the Vicksburg, Shreveport & Pacific Railroad Company has acquiesced in said suggestion and desires such appointment in order to facilitate the fullest investigation into the management of said lands:

And your petitioner further avers that the Central Trust
135-121 Company, trustee, likewise acquiesces in such appointment.

Wherefore, your petitioner prays to be authorized to retain and employ Mr. A. H. Leonard as his counsel and solicitor, in so far only as concerns his receivership of the land grant lands herein.

Petitioner prays for all general and equitable relief.

HARRY H. HALL,
Sol. for Receiver.

N. O. May — 1900.

Order.

The foregoing petition and consent being considered, the receiver, J. H. McCormick, Esq., is hereby authorized to retain and employ Mr. A. H. Leonard as his solicitor and counsel, in so far only as refers to the receivership of the land grant lands herein.

A. P. McCORMICK,
Circuit Judge.

May 14, 1900.

We, the undersigned, have no objection to this appointment, and submit the matter to the court.

New Orleans, May 12th, 1900.

FARRAR, JONAS & KRUTTSCHNITT,
Solicitors for Central Trust Co.

F. P. STUBBS,
By H., *Solicitor for V., S. & P. R. R. Co.*

ALABAMA, NEW ORLEANS, TEXAS & PACIFIC JUNCTION RYS. CO., LTD.,
By C. C. HARVEY.

(Endorsed: No. 216. U.S. circuit court, western district of Louisiana. Farmers Loan and Trust Company *vs.* Vicksburg, Shreveport & Pacific Railroad Co. Petition to appoint counsel. Filed May 16th, 1900. J. B. Beattie, clerk. H. H. Hall, solicitor for receiver.)

135–122 *Letter from C. C. Harvey, General Manager, to J. H. McCormick, Receiver, Asking for Authorization of Expenditures.*

Vicksburg, Shreveport and Pacific railroad, J. H. McCormick, receiver.

NEW ORLEANS, LA., *May 4th*, 1900.

Mr. J. H. McCormick, receiver, V., S. & P. R. R., Monroe, La.

DEAR SIR: In anticipation of a double daily passenger service which we propose to run after the M. K. & T. have completed their line into Shreveport, we ordered on March 23rd, from the Richmond locomotive and machine works, two passenger engines at a cost of $11,200.00 each, delivered f. o. b., Meridian, Miss., and from the American Car and Foundry Co., on March 21st, one combination mail and baggage car at a cost of $5,335.00. As this equipment is necessary in order to run this double daily service, I will be glad if you will petition the court to authorize this expenditure.

Yours truly,
C. C. HARVEY,
General Manager.

I approve the above:
J. H. McCORMICK, *Receiver.*

Petition of Receiver for Approval of Purchase of Two Locomotives and One Combination Mail and Baggage Car. Filed May 16, 1900.

U. S. Circuit Court, Fifth Circuit, Western District of Louisiana, Monroe Division.

FARMERS LOAN & TRUST COMPANY
vs.
VICKSBURG, SHREVEPORT & PACIFIC R. R. Co. } No. 216.

To the honorable the judges of said court:

The petition of J. H. McCormick, receiver, with respect represents:

That, as appears by the accompanying letter of May 4th, 1900, of Mr. C. C. Harvey, general manager, he, as president of the Vicksburg, Shreveport and Pacific Railroad Company, on the 23d of March last past, in anticipation of a double daily passenger service, had ordered from the Richmond locomotive & machine works, two passenger engines, at a cost of $11,200.00 each, delivered f. o. b., Meridian, Miss., and from the American Car & Foundry Company, on March 21st, one combination mail and baggage car at a cost of $5335.00. 135–123

And your petitioner further represents, that the double daily passenger service aforesaid will be rendered necessary by the completion of the line of the Missouri, Kansas & Texas Ry. Co., into Shreveport, which line will connect with that of the Vicksburg, Shreveport & Pacific Railroad Company, and that said equipment is necessary and indispensable to running this double daily service.

Wherefore, your petitioner prays that the orders and contracts above referred to be approved by the court, and that your petitioner be authorized to carry out the same and receive said equipment, and to pay the price thereof, and for all general and equitable relief.

HARRY H. HALL,
Solicitor for Receiver.

Order.

The foreg-ing petition considered, let J. H. McCormick, Esq., receiver, be and he hereby is authorized to carry out and fulfil the contracts made by the president of the Vicksburg, Shreveport & Pacific Railroad Company, with the Richmond locomotive & machine works, on March 23d, for the purchase of two passenger engines, at a cost of $11,200.00 each, delivered f. o. b. at Meridian, Miss., and with the American Car & Foundry Company of March 21st, for the purchase of one combination mail and baggage car at a cost of $5335.00, f. o. b., Jeffersonville, Ind., and said receiver is

hereby authorized to accept delivery of said equipment and to pay such purchase price upon such delivery.

____ ____,
Circuit Judge.

135–124 Referred to Wm. Grant, special master, for investigation, examination and prompt report.

A. P. McCORMICK, *Cir. Judge.*

May 14, 1900.

(Endorsed: No. 216. U. S. circuit court, fifth circuit, western district of Louisiana, Monroe division. Farmers Loan and Trust Company *vs.* V. S. & P. R. R. Company. Petition of receiver for approval of purchase of two locomotives and one combination mail and baggage car. Filed May 16th, 1900. J. B. Beattie, clerk. H. H. Hall, solicitor for receiver. Certified copy pet. and order made and forwarded May 16th, 1900.)

Petition to Sell Lots. Filed May 16, 1900.

U. S. Circuit Court, Fifth Circuit, Western District of Louisiana, Monroe Division.

FARMERS LOAN AND TRUST COMPANY
vs.
VICKSBURG, SHREVEPORT & PACIFIC R. R. Co. } No. 216.

To the honorable the judges of said court.

The petition of J. H. McCormick, receiver, with respect represents: That when the Vicksburg, Shreveport and Pacific Railroad Company was being constructed from Monroe to Shreveport, in 188–, an arrangement was entered into between the railroad company and the different land owners, at different points between Monroe and Shreveport, by which various tracts of lands, of about eighty acres each, were set aside by the land owners for station or other railway purposes, and for town sites at certain proposed stations, the railroad company to have the ownership of as much of the reservation as might be necessary for station building and grounds, and the balance to be subdivided into lots and equally divided between the railroad company and the land owners.

135–125 Your petitioner represents that the portions of said reservations not required for actual railroad purposes have long since been subdivided, one-half thereof going back, as agreed, to the land owners, and the other half being vested in the names of C. C. Harvey and F. Y. Anderson, as trustees, for the benefit of the Vicksburg, Shreveport and Pacific Railroad Company.

That these lands were thus put in the names of the said trustees in order that they might be sold, as occasion required, free from the railroad mortgages.

Your petitioner represents that, as sales have been made of said lands, the trustees have paid over the proceeds of said sales to said railroad company.

And your petitioner further represents that there *is* now submitted to him, the following offers for which he desires to receive the sanction and approval from this court.

1. Ruston.—All of block "Q," 400 feet by 240 feet, less a small lot 30 feet by 100 feet, at the price of $1200.00, and the obligation by the purchaser to erect thereon, this season, a cotton compress.

2. Arcadia.—Three lots, aggregating 100 feet by 120 feet, in block "A," for $235.00.

Your petitioner represents that the Ruston block has running into it a spur track from the railroad, and has been heretofore leased for warehouse purposes at a rental of $25.00 per annum; that the erection of a cotton compress on said square of ground will give to the railroad company much and valuable traffic and that the price offered, with the inducement of said traffic, as well as the price offered for the Arcadia lots, are the full and fair value of the said property;

And your petitioner avers that the proceeds of these sales, if approved, will be paid over by said trustee to your petitioner as receiver of the Vicksburg, Shreveport & Pacific Railroad Company and of the first mortgage.

Petitioner prays for all general and equitable relief.

HARRY H. HALL,
Sol. for Receiver.

C. C. Harvey, being sworn, says that all of the facts and
135-126 allegations of the foregoing petition are true, and that the sales in question are desirable, and the prices offered are the full and true value of the property in question.

C. C. HARVEY.

Sworn to and subscribed before me this 15th day of May, 1900.
[L. S.] PURNELL M. MILNER, *Not. Pub.*

Referred to Wm. Grant, special master, for investigation, examination and prompt report, first giving due notice to parties of time and place of hearing.

May 15th, 1900.

A. P. McCORMICK, *Cir. Judge.*

(Endorsed: No. 216. U. S. circuit court, fifth circuit, western district of La., Monroe division. Farmers Loan & Trust Co., *vs.* V. S. & P. R. R. Co. Petition to sell lots. Filed May 16th, 1900. J. B. Beattie, clerk. H. H. Hall, solicitor for receiver.)

Clerk's Certificate.

UNITED STATES OF AMERICA,
Western District of Louisiana.

Clerk's office, United States circuit court, fifth circuit, western district of Louisiana.

I, J. B. Beattie, clerk of the United States circuit court for the western district of Louisiana, do hereby certify the foregoing 119 pages do contain a true and correct copy of all the papers, orders and decrees filed and entered in the consolidated cause, Farmers' Loan and Trust Company, trustee, complainant, *vs.* The Vicksburg, Shreveport and Pacific Railroad Company *et al.*, defendants, No. 216 on the docket of said court, as fully as the same appears on file and of record in my office.

Witness my hand and the seal of said court at the city of [SEAL.] Shreveport, Louisiana, this the 29th day of May, A. D. 1900.

J. B. BEATTIE, *Clerk.*

135–127 *Amended and Supplemental Bill of Complaint. Filed May* 31, 1900.

U. S. Circuit Court, Western District of La., Fifth Circuit, Monroe Division.

FARMERS LOAN & TRUST COMPANY, Complainant,
vs.
VICKSBURG, SHREVEPORT & PACIFIC RAILROAD COMPANY, Defendant. } No. 216.

In Equity.

The Farmers Loan & Trust Company, complainant herein, by leave of the court in that behalf first had and obtained, brings this its amended and supplemental bill of complaint against The Vicksburg, Shreveport & Pacific Railroad Company, defendant herein; and thereupon your orator complains and says:

That in the prayer of its original bill herein, it asked that the proceeds of sale of the property upon which the mortgage is herein sought to be foreclosed be applied:

"1*st. To the payment of the said accrued interest and interest coupons.*

"2*nd. To the payment of the principal of said bond without discrimination or preference, ratably to the aggregate amount of said unpaid principal;*" and your orator says that the interest upon certain of said outstanding mortgage bonds has been paid as they matured,

while the interest upon other of said bonds has not been paid as they matured (as is averred in said original bill of complaint) for many years last past; and that your orator as trustee, in justice to all interests entrusted to it, does not desire to place itself of record as seeking to determine whether or not the holders of such bonds who have not received interest thereon will be entitled to a preference or priority of payment in the proceeds of such sale, or whether all the outstanding bonds and interest coupons unpaid should share ratably in said proceeds; and that your orator desires to so modify said original prayer as to leave the question open for the court to determine when it shall enter into its decree for sale, or at some other and proper time.

Further, your orator complains and says, that in its original bill herein, it averred in clause 9 thereof, that "on said $308,000.00 bonds of said mortgage, the interest has been punctually paid semi-annually and in conformity with the terms of said mortgage, but that no interest whatever and none of the coupons have been paid on said $3,692,000.00 of said first mortgage bonds, since January 1st, 1890, when there was paid on coupon No. 17, then maturing, the sum of $5,762.48, leaving due and unpaid on said coupon $104,997.52. 135–128

And your orator shows unto your honors, that while it is true, as is thus alleged in paragraph 9 of said original bill of complaint, no coupon of said first mortgage bonds maturing subsequently to January 1st, 1890, has been paid, and that on account of said coupon No. 17, maturing on that date, only the sum of $5,762.48 has been paid, it is not true, as erroneously averred in said paragraph 9, that no interest on said first mortgage bonds has been paid since January 1st, 1890; and your orator shows that said averment was made in error of fact, the truth being that payments of interest have been regularly made upon said first mortgage bonds in the sums and at the dates hereinafter fully set out, but that the sum total of such payments have only been sufficient to extinguish the coupons from 1 to No. 16, inclusive, and to pay on account of coupon No. 17, the sum of $5,762.48, as averred.

And your orator further shows unto your honors that the following payments of interest at the time specified have been made to the holders of the $3,692,000.00 of said mortgage bonds to-wit:

December 7th, 1891	$36,920.00
December 6th, 1892	36,920.00
Jan. 20th, 1894	10,000.00
Dec. 5th, 1894	1,692.28
Sept. 23rd, 1895	25,000.00
Oct. 28th, 1895	26,881.84
Sept. 1st, 1896	25,000.00
Sept. 24th, 1896	30,329.36
July 30th, 1897	28,776.52
Dec. 23rd, 1897	22,123.96

July 25th, 1898		60,000.00
	Sept. 19th, 1898	33,332.51
135–129	July 24th, 1899	30,000.00
	Sept. 25th, 1899	60,000.00
October 19th, 1899		21,826.01

And that upon the occasion of each of these payments a receipt was given therefor as interest on the first mortgage bonds or interest coupons of the first mortgage bonds aforesaid.

And your orator further shows that on the 12th of December, 1892, a resolution was passed by the board of directors of said Vicksburg, Shreveport & Pacific Railroad Company, reciting that, whereas, the net earnings of said company had not been sufficient to meet the entire interest, as it matured on semi-annual coupons of all of its first mortgage bonds, it acknowledged the debt of unpaid interest on the bonds held by the Alabama, New Orleans, Texas & Pacific Junction Railways Company, Ltd., as amounting to the sum of $1,033,760.00, acknowledging said debt and renewing its obligation to pay said amount, and that a copy of said resolution was forwarded to said company, which duly acknowledged receipt thereof.

And your orator further shows unto your honors, that on the 14th of December, 1897, a similar resolution was passed by the board of directors of said Vicksburg, Shreveport and Pacific Railroad Company, reciting that upon the 1st of July, 1897, the amount of interest then owing to said company holder of said bonds was $1,971,556.04, and it thereby acknowledged said debt, and renewed its obligation to pay the same. All of which will more fully appear by statements of said interest account and resolutions of said board of directors, as shown by extracts from the minutes of the Vicksburg, Shreveport and Pacific Railroad Company, hereto annexed and made part hereof, as Exhibits V 1, V 2, V 3, V 4, V 5 and V 6.

Wherefore your orator prays, as it has heretofore prayed in its original bill of complaint, and further that said Vicksburg, Shreveport and Pacific Railroad Company, made defendant herein, made answer, but not under oath, such oath being hereby waived, according to the practice of this court, all and singular the matters stated and charged herein, and that it be permitted to amend hereby its original bill of complaint, as hereinbefore set out, and that
135–130 the determination of the priority of payment of accrued interest and payment of the principal of said bonds be left to the determination of the court hereafter, and that your orator will not be held to be precluded as to the priority of payment of said accrued interest by the averment of its original bill of complaint. And your orator prays for leave to file this amended and supplemental bill.

And it may please your honors to grant unto your orator a writ of subpœna issued out of and under the seal of this honorable court, directed to the defendant above named, thereby notifying it at a certain time and under a certain penalty to be and appear personally,

before this honorable court and then and there to answer all and singular the matters contained in and set forth in said amended and supplemental bill and to stand by and abide by and perform such order, direction and decree as shall be made herein, as to your honors may seem meet and agreeable to equity and good conscience, and your orator will ever pray, etc.

TURNER, McCLURE & ROLSTON,
Solicitors F. L. & T. Co.

HARRY H. HALL, *Of Counsel.*

Harry H. Hall, being sworn, says that he is of counsel for The Farmers Loan & Trust Company, complainant in the foregoing amended and supplemental bill of complaint, and that he has read the same and knows the contents thereof, that the allegations therein are true, to the best of his knowledge, information and belief.

HARRY H. HALL.

Sworn to and subscribed to before me this 28th day of May, 1900.

[SEAL.] PURNELL M. MILNER, *Not. Pub.*

Let the complainant be, and he is hereby, authorized to file this supplemental bill of complaint.

A. P. McCORMICK,
Circuit Judge.

May 29th, 1900.

135-131 *Statement of V., S. & P. First Mortgage Interest Due on 3692 Bonds Held by the Alabama, New Orleans, Texas & Pacific Junction Railways Co., Ltd.*

Coupon No.	Payable.	Amount.	Paid as follows.
12.	1st Jan., 1888,	$110,760.	$36,920.00, Dec. 7th, 1891. 36,920.00, Dec. 6th, 1892. 10,000.00, Jan. 20th, 1894. 1,692.28, Dec. 5th, 1894. 25,000.00, Sept. 23d, 1895. 227.72, Oct. 28th, 1895.
			$110,760.00
14.	1st July, 1888,	$110,760.	$26,654.12, Oct. 28th, 1895. 25,000.00, Sept. 1st, 1896. 30,329.36, Sept. 24th, 1896. 28,776.52, July 30th, 1897.
			$110,760.00

15.	1st Jan., 1889,	$110,760.	$22,123.96, Dec. 23d, 1897. 60,000.00, July 25th, 1898. 28,636.04, Sept. 19th, 1898.
			$110,760.00
16.	1st July, 1889,	$110,760.	$4,696.47, Sept. 19th, 1898. 30,000.00, July 24th, 1899. 60,000.00, Sept. 25th, 1899. 16,063.53, Oct. 19th, 1899.
			$110,760.00
17.	1st Jan., 1890,	$110,760.	$5,762.48, Oct. 19th, 1899.
18.	1st July, 1890,	110,760.	
19.	1st Jan., 1891,	110,760.	
20.	1st July, 1891,	110,760.	
21.	1st Jan., 1892,	110,760.	
22.	1st July, 1892,	110,760.	
23.	1st Jan., 1893,	110,760.	
24.	1st July, 1893,	110,760.	
25.	1st Jan., 1894,	110,760.	
26.	1st July, 1894,	110,760.	
27.	1st Jan., 1895,	110,760.	
28.	1st July, 1895,	110,760.	
29.	1st Jan., 1896,	110,760.	
30.	1st July, 1896,	110,760.	
31.	1st Jan., 1897,	110,760.	
32.	1st July, 1897,	110,760.	
33.	1st Jan., 1898,	110,760.	
34.	1st July, 1898,	110,760.	
35.	1st Jan., 1899,	110,760.	
36.	1st July, 1899,	110,760.	
37.	1st Jan., 1900,	110,760.	
		$2,325,960.00	
	Less paid 19 Oct., 1899,	5,762.48	
		$2,320,197.52	

135–132 Board of directors.

Extract from minutes of meeting of Vicksburg, Shreveport & Pacific Railroad Company held in New York, June 20th, 1893.

"The secretary reported the receipt from the Alabama, New Orleans, Texas & Pacific Junction Railways Company, Limited, of an abstract from minutes of a board meeting of that company, held January 10th, 1893, given over the seal of the company, which, after reciting the reading of the letter of the secretary of the Vicksburg,

Shreveport & Pacific R. R. Co., of December 16th, 1892, enclosing certified copy of preamble and resolutions relating to certain unpaid coupons of first mortgage bonds passed by the board of directors of the V. S. & P. R. R. Co. on December 13th, 1893, and reciting the text of said preamble and resolutions, concludes as follows:

"Resolved, That a formal acknowledgment of the receipt of the said resolution be given under the seal of this company and sent to the secretary of the Vicksburg, Shreveport & Pacific Railroad Company in New York.

"The said certified abstract from minutes of the English Company was ordered filed."

Extract from minutes of meeting of board of directors of the Vicksburg, Shreveport & Pacific Railroad Company held in New York on December 12, 1892.

"Mr. Bond offered the following preamble and resolutions, which were seconded by Mr. Bacon, and unanimously adopted, viz:

"Whereas, the net earnings of the Vicksburg, Shreveport and Pacific Railroad Company, since its completion in 1884, have not been sufficient to meet the entire interest as it matured on semi-annual coupons on all of its first mortgage bonds; and

"Whereas, with the consent of the Alabama, New Orleans, Texas & Pacific Junction Railways Company, Limited, holders of 3692 bonds, numbered 1 to 802, both inclusive, and 1111 to 4000, both inclusive, the net earnings of the Vicksburg, Shreveport & Pacific Railroad Company have been applied to the payment of
135–133 the coupons on those of such mortgage bonds numbered from 803 to 1110, both inclusive, held by other parties, leaving only a surplus to the first day of July, 1892, of $20.00 per bond, which sum has been paid and credited upon the coupon maturing on the first day of January, 1888, on said bonds of the Alabama, New Orleans, Texas & Pacific Junction Railways Company, Limited, in two amounts of $10.00 each; and

"Whereas, no other payments have been made by the Vicksburg, Shreveport & Pacific Railroad Company on any of the coupons falling due since July 1, 1887, of any of said first mortgage bonds now held by the Alabama, New Orleans, Texas & Pacific Junction Railways Company, Limited, or others, and numbered from 1 to 802, both inclusive, and from 1111 to 4000, both inclusive; and

"Whereas, there are due and unpaid to the first day of July, 1892, inclusive, the coupons of said 3692 1st mortgage bonds belonging to the Alabama, New Orleans, Texas & Pacific Junction Railways Company, Limited, amounting in all to the sum of $1,033,760; and

"Whereas, it is the purpose of the Vicksburg, Shreveport and Pacific Railroad Company not to take advantage of its failure to meet its obligations promptly, but as far as it can, to preserve the rights of all of its creditors, and especially of said holders of its first mortgage bonds and the interest coupons thereon:

"Therefore, be it resolved, that the Vicksburg, Shreveport and Pacific Railroad Company, for want of funds from its earnings, having failed to pay the interest coupons, maturing January and July in each year, from January 1, 1888, to July 1, 1892, inclusive, on its first mortgage bonds, numbered from 1 to 802, both inclusive, and from 1111 to 4000, both inclusive, and none of said coupons being paid in full, and no payment having been made on any of them, except twenty dollars per bond on the coupon maturing on the first day of January, 1888: The Vicksburg, Shreveport and Pacific Railroad Company now hereby acknowledges said fact, intending from this date to renew its obligation to pay each of the past due coupons on the said first mortgage bonds, now past due, numbered from 1 to 802, both inclusive, and from 1111 to 4000, both inclusive, intending hereby that if less than five years have elapsed since the maturity of either or any of said coupons, to acknowledge its liability to pay the same to take effect from the date of this resolution; and if more than five years have elapsed since the maturity of any of said coupons, with a full knowledge of its rights in the premises, it hereby acknowledges the obligation of the Vicksburg, Shreveport & Pacific Railroad Company to pay the same, and promises and binds itself to pay any and all matured coupons on the said bonds, numbered from 1 to 802, both inclusive, and from 1111 to 4000, both inclusive, in whosoever hands they may be now or hereafter; and

135–134

"Resolved, That the secretary is directed to forward a certified copy hereof to the Alabama, New Orleans, Texas & Pacific Junction Railways Company, Limited, with a request that a formal acknowledgment thereto be given under the seal of the company."

Board of directors.

Extract from minutes of meeting of Vicksburg, Shreveport & Pacific Railroad Company held in New York, Nov. 3rd, 1898.

"The secretary reported the receipt from the Alabama, New Orleans, Texas & Pacific Junction Railways Company, Limited, London, of an extract from minutes of a board meeting of that company held on January 18, 1898, given over the seal of the company, which, after reciting the reading of the letter of the secretary of the Vicksburg, Shreveport & Pacific R. R. Co., of Dec. 30, 1897, enclosing certified copy of preamble and resolutions relating to certain unpaid coupons of first mortgage bonds passed by the board of directors of the Vicksburg, Shreveport & Pacific R. R. Co. on December 14, 1897, concludes as follows:

"'Resolved, That a formal acknowledgment of the receipt of "the said preamble and resolutions be given under the seal of this "Company and sent to the secretary of the Vicksburg, Shreveport "& Pacific R. R. Co. in New York.'

"A copy of said preamble and resolutions is annexed to the said extract from the minutes.

"The said certified extract from the minutes of the English company was ordered filed."

135–135 Extract from minutes of meeting of board of directors of the Vicksburg, Shreveport and Pacific Railroad Company held in New York, December 14, 1897.

"Mr. Bond offered the following preamble and resolutions, which were seconded by Mr. Jarvis and unanimously adopted:

"Whereas, the net earnings of the Vicksburg, Shreveport and Pacific Railroad Company, since its completion in 1884, have not been sufficient to meet the entire interest as it matured on the semi-annual coupons on all of its first mortgage bonds; and

"Whereas, with the consent of the Alabama, New Orleans, Texas and Pacific Junction Railways Company, Limited, holders of 3692 bonds, numbered 1 to 802, both inclusive, and 1111 to 4000, both inclusive, the net earnings of the Vicksburg, Shreveport and Pacific Railroad Company have been applied to the payment of coupons on those of such mortgage bonds, numbered from 803 to 1110, both inclusive, held by other parties, leaving only a surplus to the first day of July, 1897, of $243,643.96, with which the coupons of said company's bonds aforesaid maturing on the first day of January, 1888, and on the 1st day of July, 1888, amounting to $221,520.00, have been paid and taken up, and $22,123.96 paid and credited upon the coupon maturing on the first day of January, 1889, on said bonds of the Alabama, New Orleans, Texas & Pacific Junction Railways Company, Limited; and

"Whereas, no other payments have been made by the Vicksburg, Shreveport and Pacific Railroad Company on any of the coupons falling due since January 1st, 1889, of any of said first mortgage bonds now held by the Alabama, New Orleans, Texas and Pacific Railroad Company, Limited, or others, and numbered from 1 to 802, both inclusive, and from 1111 to 4000, both inclusive; and

"Whereas, there are due and unpaid to the first day of July, 1897, inclusive, the coupons of said 3692 1st mortgage bonds, belonging to the Alabama, New Orleans, Texas & Pacific Junction Railways Company, Limited, amounting in all to the sum of $1,971,556.04; and

"Whereas, it is the purpose of the Vicksburg, Shreveport & Pacific Railroad Company not to take advantage of its failure to
135–136 meet its obligations promptly, but as far as it can, to preserve the rights of all of its creditors and especially of said holders of its first mortgage bonds and the interest coupons thereon:

"Therefore, be it resolved, that the Vicksburg, Shreveport & Pacific Railroad Company, for want of funds from its earnings, having failed to pay the interest coupons maturing January and

July in each year from January 1, 1889, to July 1, 1897, inclusive, on its first mortgage bonds numbered from 1 to 802, both inclusive, and from 1111 to 4000, both inclusive, and none of said coupons being paid in full, and no payment having been made on any of them, except an amount of $22,123.96, on the coupons maturing on the first day of January, 1889; the Vicksburg, Shreveport & Pacific Railroad Company now hereby acknowledges said fact, intending from this date to renew its obligation to pay each of the past due coupons on the said first mortgage bonds, now past due, numbered from 1 to 802, both inclusive, and from 1111 to 4000, both inclusive, intending hereby that if less than five years have elapsed since the maturity of either or any of said coupons, to acknowledge its liability to pay the same, to take effect from the date of this resolution; and if more than five years have elapsed since the maturity of any of said coupons, with a full knowledge of its rights in the premises, it hereby acknowledges the obligation of the Vicksburg, Shreveport & Pacific Railroad Company to pay the same, and promises and binds itself to pay any and all matured coupons on the *the* said bonds, numbered from 1 to 802, both inclusive, and from 1111 to 4000, both inclusive, in whosoever hands they may be now or hereafter; and

"Resolved, That the secretary is directed to forward a certified copy hereof to the Alabama, New Orleans, Texas & Pacific Junction Railways Company, Limited, with a request that a formal acknowledgment thereto be given under the seal of the company."

Filed May 31, 1900.

J. B. BEATTIE, *Clerk.*

(Endorsed: No. 216. U. S. circuit court, western district of Louisiana, Monroe division. Farmers Loan & Trust Company *vs.* Vicksburg, Shreveport & Pacific Railroad Company. Amended and supplemental bill. Filed May 31st, 1900. J. B. Beattie, clerk.)

135–137 *Petition to Pay Interest. Filed May* 31, 1900.

U. S. Circuit Court, Fifth Circuit, Western District of Louisiana, Monroe Division.

FARMERS LOAN & TRUST COMPANY
vs.
VICKSBURG, SHREVEPORT & PACIFIC R. R. Co. } No. 216.

To the honorable the judges of said court:

The petition of J. H. McCormick, receiver, with respect represents:

That the Vicksburg, Shreveport & Pacific Railroad Company's first mortgage bears date July 1st, 1881, and is for $4,000,000.00.

That, on the 25th of November, 1885, a prior lien bond for $1,323,000.00 was issued upon the property of said railroad, with the assent of the owners and holders of 3894 of the first mortgage bonds out of a total issue of 4000 bonds, thus leaving 106 bonds, $106,000.00, at 6 per cent. with the first lien on the whole property.

The prior lien bond..... $1,323,000.00
at 6 per cent is the next lien.
making a total of..... $1,429,000.00

At 6 per cent. being preferred to the secured first mortgage bonds of $3,894,000.00, at 6 per cent.

Your petitioner avers, that the semi-annual interest has always been promptly paid upon the aforesaid $106,000.00, and the aforesaid $1,323,000.00, and that it is important that no default should be made in the payment of said interest, as when the Vicksburg, Shreveport & Pacific Railroad Company is sold, it will doubtless be found advantageous to sell the same subject to the mortgage and lien existing in favor of these two sums; that the value of the property largely exceeds $1,429,000.00, and that consequently, the continued payment of this interest can be made without prejudice to the rights of any of the other creditors. Semi-annual interest, to-wit: 3 per cent. on the $106,000.00, is due on the 1st of July, 1900, to-wit: $3,180.00.

Your petitioner avers, that by an arrangement had between said company and the parties in New York through whom said
135–138 interest is paid a commission of ¼ of 1 per cent. is saved to the company, if this amount of $3,180.00 can be remitted to New York before the 1st of June.

Your petitioner avers, that the semi-annual interest on the prior lien bonds was deposited with the Central Trust Company in New York for payment to said bondholders on the 1st of April last, and that no further sum need be deposited for interest on the prior lien bonds until October next.

And your petitioner avers, that the numbers of the one hundred and six non-assenting first mortgage bonds are:

808 to 830, inclusive	23	bonds
948 to 960, inclusive	13	"
966 to 1330, inclusive	65	"
1101 to 1105, inclusive	5	"
	106	bonds

And your petitioner avers, that there are ample funds resulting from the operation of said railroad with which to make this payment, without prejudice to the payment of any other obligations of said company.

Wherefore, petitioner prays that he be authorized to remit to New York on or before June 1st, $3180.00, in payment of the semi-annual interest, due July 1st, on the above numbered one hundred and six

first mortgage bonds of said railroad company, and for all general and equitable relief.

HARRY H. HALL, *Sol'r.*

C. C. Harvey, being sworn, says that he is the president and general manager of the Vicksburg, Shreveport & Pacific Railroad Company, that all of the allegations of the foregoing petition are true.

C. C. HARVEY.

Sworn to and subscribed to before me, this 28th day of May, 1900.

[SEAL.] PURNELL M. MILNER, *Not. Pub.*

Order.

The foregoing petition and affidavit being considered, let the receiver be and he hereby is authorized to remit to New York 135–139 before the first of June, 1900, thirty-one hundred and eighty dollars, semi-annual interest, due July 1st, 1900, on $106,000.00 of the non-assenting first mortgage bonds, hereinbefore numbered and described.

A. P. McCORMICK,
Circuit Judge.

May 29, 1900.

(Endorsed: No. 216. U. S. circuit court, western district of Louisiana, Monroe division. Farmers Loan & Trust Company *vs.* Vicksburg, Shreveport & Pacific Railroad Company. Petition to pay interest. Filed May 31st, 1900, J. B. Beattie, clerk.)

Answer to Supplemental Bill of Complaint. Filed June 2, 1900.

U. S. Circuit Court, Fifth Circuit, Western District of Louisiana, Monroe Division.

FARMERS LOAN AND TRUST COMPANY
vs.
VICKSBURG, SHREVEPORT & PACIFIC R. R. Co. } No. 216.

The Vicksburg, Shreveport and Pacific Railroad Company, a corporation created by and existing under the laws of the State of Louisiana, a citizen of said State, domiciled at Monroe, for answer to the supplemental and amended bill of complaint of the Farmers Loan and Trust Company, trustee, or unto so much thereof as this defendant is advised it is material or necessary for it to make answer unto, answering saith:

1. It is provided in the mortgage and deed of trust made by re-

spondent to said Farmers Loan and Trust Company, on the 1st of July, 1881, under and by virtue of which the bill of complaint herein has been filed, that in case of foreclosure and sale of the mortgaged property, after payment from the proceeds thereof, of all taxes due and all just and proper expenses in the premises, the said Farmers Loan and Trust Company, trustee, shall apply said proceeds: "In the first place to the payment of all interest in arrear on all of the said bonds, then outstanding if sufficient for that purpose, and if not sufficient, then *pro rata;* and in the second place, after
135–140 payment of such interest in arrear and the payment of the principal of all of said bonds outstanding in full, if sufficient for that purpose, and if not sufficient, then *pro rata*, etc., etc."

And this defendant, answering, says:

That under the terms and conditions of said deed of trust, such interest coupons as have not been paid, should be paid in preference to all other interest due upon said bonds and to the principal thereof.

2. This defendant admits that the payments as set out in said amended bill of complaint have been duly made, at the times and in the amounts specified, and that the certain resolutions of this defendant's board of directors, as set forth in said amended bill of complaint and as shown by the annexed exhibits were duly passed by its said board of directors and were duly communicated to the said Alabama, New Orleans, Texas & Pacific Junction Railways Company, Ltd., and therefore this defendant prays that this honorable court shall enter such proper order or orders in the premises as are asked for in said supplemental bill of complaint and for such further action of the court as may be found to be proper.

FRANK P. STUBBS,
Solicitor for Defendant.

C. C. Harvey, being sworn, says that he is the president of the Vicksburg, Shreveport & Pacific Railroad Company, that he has read said amended bill of complaint and the foregoing answer, and that all of said allegations are true to the best of affiant's knowledge and belief.

C. C. HARVEY.

Sworn to and subscribed before me this 29th day of May, 1900.
[SEAL.] PURNELL M. MILNER, *Not. Pub.*

Filed June 2nd, 1900.

(Endorsed: No. 216. U. S. circuit court, Monroe division, fifth circuit, western district of Louisiana. Farmers Loan & Trust Company *vs.* Vicksburg, Shreveport & Pacific Railroad Company. Answer to supplemental bill. Filed June 2nd, 1900. J. B. Beattie, clerk.)

135–141 *Clerk's Certificate.*

UNITED STATES OF AMERICA,
Western District of Louisiana, } ss:

I, J. B. Beattie, clerk of the United States circuit court for the western district of Louisiana, do hereby certify that the foregoing 17 pages contain a true and correct copy of the amended and supplemental bill of complaint with exhibits thereto annexed, and order thereon—petition to pay interest and order thereon—together with answer of defendant, in the case of Farmers' Loan & Trust Co., complainant, *vs.* Vicksburg, Shreveport & Pacific Railroad Company, defendant, No. 216, United States circuit court, fifth circuit, western district of Louisiana, Monroe division, as the same appears on file and of record in my office.

Witness my hand and seal of said court, at the city of Shreveport, Louisiana this the 1st day of June, A. D. 1900.

[SEAL.] J. B. BEATTIE, *Clerk.*

Certified copy of petition to confirm master's report, order of court thereon, and master's report on purchase of two passenger engines, one mail and baggage car, and sale of lots in Ruston and Arcadia.

United States Circuit Court, Western District of Louisiana,
Monroe Division.

FARMERS LOAN AND TRUST COMPANY
vs.
VICKSBURG, SHREVEPORT & PACIFIC R. R. Co. } No. 216.

To the honorable the judges of said court:

The petition of J. H. McCormick, receiver, with respect represents, that he files herewith the master's report on the following petitions:

1st. Praying to complete the purchase of two passenger engines for $11,200.00 each, and one mail and baggage car for $5,335.00, under order of reference, May 14th, 1900.

2nd. Praying for authority to sell a parcel of land in block "Q," Ruston, for $1200.00, and three lots in Arcadia in block "A," for $235.00, under order of reference, dated May 14th, 1900.

135–142 Your petitioner represents that, after due notification to all parties in interest and a contradictory hearing of witnesses, Mr. Wm. Grant, special master, has recommended that your petitioner be authorized to carry out and complete the aforesaid purchase, and sell such portions of lots of ground.

Wherefore, your petitioner prays that this report be approved and confirmed, and that your petitioner be authorized to make said

purchase and to effect said sales therein described, and for all general relief.

New Orleans, May 31st, 1900.

HARRY H. HALL,
Solicitor for Receiver.

Order.

Considering the master's report under orders of reference May 14th, 1900, the testimony of witnesses taken contradictorily and the recommendation of said master, it is ordered that said reports be approved and confirmed, and that J. H. McCormick, receiver, be and he hereby is authorized:

1st. To carry out and complete the contract of purchase with the Richmond locomotive and machine works, heretofore made, for two passenger engines, at a cost of $11,200.00, each, and with the American Car and Foundry Company, for one combination mail and baggage car at a cost of $5,335.00.

2. That the said receiver be authorized to sell all of block "Q." at Ruston, 400 feet by 240 feet, less a small lot, 30 feet by 100 feet, at the price of $1200.00; and three lots of ground in Arcadia, in block "A," aggregating 100 feet by 120 feet, for $235.00; and that said receiver be authorized to sign deeds of sale for the same.

June 4th, 1900.

A. P. McCORMICK,
Circuit Judge.

Master's No. 1.

United States Circuit Court for the Western District of Louisiana.

FARMERS LOAN & TRUST CO.
vs.
VICKSBURG, SHREVEPORT & PACIFIC R. R. CO. } No. 216.

135–143 Master's report on the petition of J. H. McCormick, Esq., receiver, praying for authority to purchase two passenger engines at a cost of $11,200.00 each, and one mail and baggage car, at a cost of $5335.00, under order of reference dated May 14th, 1900.

I respectfully report, that the reference in the above matter was heard by me, at my office, No. 701 Hennen building, on the 23rd of May, 1900, at 3:30 o'clock p. m., pursuant to notice served on all parties to the record, at which the deposition- of witnesses were taken, and proofs submitted, as set out in the transcript of the proceedings had before me, annexed hereto, and returned into court with this report.

It appears from the evidence that the defendant corporation had, previously to the appointment of a receiver in this case, through

C. C. Harvey, its president and general manager, made an arrangement with the Missouri, Kansas and Texas Railroad Co., for the establishment of a double daily passenger service, upon the completion of said railway into Shreveport, for the interchange of anticipated business which would result from a connection of the two lines; and that on the 23rd of March last, the said Harvey contracted to purchase two passenger engines for the price and sum of $11,200.00 each, from the Richmond locomotive and machine works, and to purchase from the American Car & Foundry Co., on the 21st of March, one combination mail and baggage car for the price and sum of $5335.

And it appears from the evidence of the said C. C. Harvey, who is familiar with the requirements of his road, that said equipment is necessary and highly advantageous to the operation of the property, and that the prices contracted to be paid are fair and reasonable.

I therefore recommend that J. H. McCormick, receiver, be authorized to carry out and complete the contract of purchase heretofore made by Mr. Harvey, and to receive delivery of said engines and said car, and pay for the same in cash, out of any funds in his possession, not otherwise specially appropriated.

Respectfully submitted, WM. GRANT,
Special Master.

135–144 United States Circuit Court for the Western District of Louisiana.

FARMERS LOAN & TRUST COMPANY
vs.
VICKSBURG, SHREVEPORT & PACIFIC R. R. Co. } No. 216.

Depositions and proofs taken and proceedings had before William Grant, Esqr., master, at his office, room 701, Hennen building, in the city of New Orleans, May 23rd, 1900, at 3:30 p. m., pursuant to the annexed notice, on petition of J. H. McCormick, Esqr., receiver, praying authority to purchase two engines and one mail and baggage car.

Present: H. H. Hall, Esqr., solicitor for the receiver. A. H. Leonard, Esqr., solicitor for H. D. Hearms.

Mr. C. C. HARVEY, being duly sworn by the master according to law, deposes and says:

Direct examination.

By Mr. HALL:

Q. You are the president and general manager of the V. S. & P. R. R. Co.?

A. I am.

Q. An application has been filed here upon your representation to Mr. McCormick, receiver, that he be authorized to purchase two locomotives and a combination mail and baggage coach?

A. Yes, sir.

Q. Please state the exact circumstances which made this application necessary.

A. The V. S. & P. R. R. Co. recently entered into a contract with the M., K. & T. road, under which that road will build from Jefferson, Texas, to Wascom, and lease the V. S. P. from Wascom to Shreveport, which will give the V. S. & P. another connection to and from Texas, and when that comes about we propose to run a second passenger train on the V. S. & P. road.

Q. Between what points?

A. Between Shreveport and Vicksburg, and for that purpose we want two additional locomotives. As a matter of fact, we want three, but the prices were high, and I cut it down temporarily to two locomotives. I ordered those locomotives.

135–145 Q. When?

A. In March, 1900, getting bids from the Baldwin locomotive works and from the Richmond locomotive works. The Baldwin locomotive works bid $11,850.00——

Q. A piece?

A. Yes, sir, a piece; and the Richmond locomotive works bid $11,200.00, and I then gave the order to the Richmond locomotive works for these two locomotives. I think it is very necessary for the V. S. & P. to have those two additional locomotives.

Q. This contract was made with the company before the receivership was thought of?

A. It was.

Q. And was a completed contract?

A. Yes.

Q. And you consider those locomotives and that combination car absolutely indispensable to the successful operation of the increased traffic which you expect by reason of this new extension of this new connection?

A. We could not run the trains—the second train—without the additional locomotives.

Q. That is a fair price for the locomotives and the coach?

A. A very fair price.

Cross-examination.

By Mr. LEONARD:

Q. In your judgment, do you consider that the contract with the V. S. & P. road is beneficial to the V. S. & P. road?

A. The contract between these roads is highly beneficial to the V. S. & P.

By Mr. HALL:

Q. It enables the V. S. & P. to lease 18 miles of what is called the "Wascom extension," which had been leased to the T. & P. road, which lease had expired?

A. It gives us a rental for the 18 miles extension, which was not used at all, and it gives us a rental for the Shreveport terminals which the M. K. & T. will jointly use with the V. S. & P.

Q. What, is about the rentals?

A. I will have to look at my figures. In my opinion, the chief value of that contract is the additional business which we hope to get over the V. S. & P. road. I may say we have done very little through business from the East to Texas or from Texas to the East, through the Shreveport gateway, for the reason that the T. & P. has an outlet here at New Orleans, and it prefers all its through business to come through New Orleans rather than through Shreveport, and the Southern Pacific also has its gateway here, and this M. K. & T. road will give us an outlet there and an inlet there which we did not have before, and it ought to be beneficial to the road.

135–146

By Mr. LEONARD:

Q. It will produce a rental then in addition to the increased business?

A. Yes, sir.

By Mr. HALL:

Q. Just look at your books and send a copy of them to the stenographer so that it can be placed in the record.

A. For the 18 miles it is four per cent. on a valuation of $12,000.00 per mile. We have a right to allow another road to come in there without reduction of rental of the M. K. & T.

Q. Four per cent. on $12,000.00?

A. The rental of the road is four per cent. on $12,000.00 per mile. With regard to the joint use of the terminals the rent is $5400.00 per annum, and in addition to the joint use of these terminals at Shreveport, the M. K. & T. road will pay its proportion of the cost of maintaining and operating them, which will reduce our expenses.

By the MASTER:

Q. What position have you occupied with the Vicksburg, Shreveport & Pacific railroad, Mr. Harvey?

A. I have been connected with the V. S. & P. for seventeen years, continuously; first, as assistant general manager, I think, for a few months, then as comptroller, then as vice-president, then as president, then as president and general manager.

Q. And for these reasons you are, of course, acquainted with the matters you have testified to?

A. Yes, sir; I am fully familiar with them; as to the car it is a fair value. It is a duplicate of a car we have on the Northeastern road; it is a very fair price for the car.

By Mr. HALL:

Q. State the price of the car.

A. $5335.00.

135–147 Q. How does that price compare with the similar car bought by you for the Northeastern?

A. It is a little higher, because prices have gone up. The cars bought for the Northeastern were bought a year ago, and those sort of cars are as a rule thirty to forty per cent. more now; we got it at a slight advance.

Q. That is a fair price?

A. Yes, sir.

Q. That car is as necessary as the locomotive?

A. It is absolutely necessary.

Here the reference was closed, there being no other evidence offered.

May 23rd, 1900.

WM. GRANT,
Special Master.

United States Circuit Court for the Western District of Louisiana.

FARMERS LOAN AND TRUST CO.
vs.
VICKSBURG, SHREVEPORT & PACIFIC R. R. CO. } No. 216.

Master's No. 1.

To —— ——:

Please take notice that a hearing will be had before me at my office, No. 701 Hennen building, in the city of New Orleans, on Wednesday, the 23rd day of May, 1900, at 3:30 o'clock p. m., upon the following matters referred to me by the order of the court, entered in the above entitled cause under date of May 14th, 1900.

1. The petition of J. H. McCormick, receiver, praying for authority to purchase two passenger locomotives at a cost of $11,200.00 each, and one mail and baggage car at a cost of $5335.

New Orleans, La., May 19th, 1900.

WM. GRANT,
Special Master.

(Endorsed: The within notice sent to each of the following named parties, by mail, postage paid, May 19th, 1900: Turner, McClure & Rolston, solicitors, Farmers Loan and Trust Co., by H. H. Hall

Farrar, Jonas & Kruttschnitt, solicitors, Central Trust Co. F. P. Stubbs, solicitor, V. S. & P. R. R. Co., Monroe, La. A. H. Leonard, solicitor, J. H. McCormick, as receiver of land grant lands, Shreveport, La. Harry H. Hall, solicitor, J. H. McCormick, receiver V., S. & P. R. R. Co. J. H. McCormick, receiver, V., S. & P. R. R. Co., Monroe, La. E. T. Lamkin, solicitor for intervenor, Rob't B. Blanks, Monroe, La. A. H. Leonard, solicitor for Henry D. Hearms, Shreveport, La. Wm. Grant, special master.)

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Master's No. 1.

United States Circuit Court for the Western District of Louisiana.

FARMERS LOAN & TRUST CO.
vs.
VICKSBURG, SHREVEPORT & PACIFIC R. R. Co. } No. 216.

To —— ——:

Please take notice that a draft of the master's proposed report on the following matter is now ready for inspection in his office, No. 701 Hennen building, New Orleans, and that 4 days from May 24th, 1900, are allowed in which to file objections thereto.

The petition of J. H. McCormick, receiver, praying for authority to purchase two passenger engines at a cost of $11,200.00 each, and one mail and baggage car at a cost of $5,335.

New Orleans, La., May 24th, 1900.

WM. GRANT,
Special Master.

(Endorsed: The within notice sent by mail, postage paid, on May 24th, 1900, to each of the following named parties: H. H. Hall, sol., Farmers Loan and Trust Co. and J. H. McCormick, rec., V. S. & P. R. R., New Orleans, La. Farrar, Jonas & Kruttschnitt, sols., Central Trust Co., New Orleans, La. F. P. Stubbs, sol., V. S. & P. R. R. Co., Monroe, La. A. H. Leonard, sol., J. H. McCormick, as rec. land grant lands, and Henry D. Hearms, Shreveport, La. E. T. Lamkin, sol., R. B. Blanks, intervenor, Monroe, La.)

Master's No. 2.

United States Circuit Court for the Western District of Louisiana.

FARMERS LOAN & TRUST CO.
vs.
VICKSBURG, SHREVEPORT & PACIFIC R. R. CO. } No. 216.

Master's report on the petition of J. H. McCormick, Esq., receiver, praying for authority to sell a parcel of land in square
135–149 "Q" in Ruston, for $1200, and three lots in Arcadia for $235, under order of reference dated May 14th, 1900.

I respectfully report that the reference in the above matter was heard by me at my office, No. 701 Hennen building, on May 23rd 1900, at 3:30 o'clock p. m., pursuant to notice served on all parties to the record, at which the depositions of witnesses were taken, and proofs submitted as set out in the transcript of the proceedings had before me, annexed hereto and returned into court with this report.

It appears from the evidence, that when the Vicksburg, Shreveport & Pacific railroad was being constructed between Monroe, La., and Vicksburg, Miss., an arrangement was entered into between the railroad company and certain land owners, by which various tracts of land of about 80 acres each, at different points on the line of the road, were set aside for stations and other railroad purposes, and for town sites, the railroad company to have the ownership of so much of these lands as might be necessary for station buildings and grounds at certain proposed stations, the balance to be sub-divided into lots and equally divided between the company and the land owners. The lands not required for railroad purposes been conveyed to C. C. Harvey and F. W. Anderson, in trust for its have been sub-divided, and the shares of the railroad company *has* benefit. The title was put in the name of these trustees in order that the lands might be sold from time to time free of the general mortgage which covered after acquired property.

It further appears that these lots set aside for the benefit of the railroad company under the above arrangement are situate outside of the right of way, and are not needed by it in its operations, and that it is to the interest of all parties that they be now sold. As to that portion of square "Q," situated in Ruston, the proposed sale is especially desirable, as the purchaser proposes to establish a cotton-press thereon, already connected by a switch with the main line, which will add to the business of the road.

I find from the evidence that the sum of $1,200, offered for the portion of the square "Q," owned by the railroad company in Ruston, and that the sum of $235, offered for the three lots in
135–150 Arcadia, represent their respective values.

I therefore recommend that the said J. H. McCormick,

receiver, be authorized to sell said portions and lots of ground for cash, at the prices offered, and that the said C. C. Harvey and F. W. Anderson be authorized and directed to make deeds of conveyance to the purchasers.

Respectfully submitted, WM. GRANT,
Sp'l. Master.

United States Circuit Court for the Western District of Louisiana.

FARMERS LOAN & TRUST COMPANY
vs.
VICKSBURG, SHREVEPORT & PACIFIC R R. Co. } No. 216.

Depositions and proofs taken and proceedings had before William Grant, Esqr., master, at his office, room 701 Hennen building, in the city of New Orleans, May 23rd, 1900, at 3:30 o'clock p. m., pursuant to the annexed notice, on the petition of J. H. McCormick, Esqr., receiver, praying for authority to sell all of lot "Q," in Ruston, 400 feet by 340 feet, less a small lot 30 feet by 100 feet, for the price and sum of $1200.00, and for the sale of three lots of ground in Arcadia, agregating 100 feet by 120 feet in block "A," for the price of $235.00.

Present: H. H. Hall, Esqr., solicitor for the receiver. A. H. Leonard, Esqr., solicitor for H. D. Hearns.

Mr. C. C. HARVEY, being duly sworn by the master, deposes and says:

Direct examination.

By Mr. HALL:

Q. Mr. Harvey, concerning this lot at Ruston, which the receiver is asking to be authorized to sell, how did the V. S. & P. road acquire that land, or in whose name does it stand?

A. That is the property standing in the name of F. W. Anderson and C. C. Harvey, myself and Mr. Anderson.

Q. As trustees for the road?

A. Yes, sir. When the V. S. & P. road west of Monroe was located, certain land owners made an offer to the railroad, and said, if you will build a station, there were no towns there at that
135–151 time, at a certain spot, we will set aside certain lots for the depot grounds, and what is not required for the railroad proper will then be divided between the land owners and the railroad company. The intention at that time was to sell and for the land owners to hold the title altogether and merely when they sold these additional lands to divide the proceeds with the railroad company, but years passed on, and hardly any sales were made, so that ultimately, some few years ago, we went to these land owners and

stated that we would prefer to have the lands rather than go on in this indefinite way, and lots were drawn, this land to be sold was platted, and it was by lot divided, the land owner taking so much and the railroad company taking so much, and the title was vested in the names of these trustees so that a title could be given when we sold the land; if it was deeded to the railroad company direct, it would come under the mortgages.

Q. And this lot, application to sell which is now made, comes to the V. S. & P. under that arrangement?

A. Yes, sir.

Q. Is that lot necessary for the railroad purposes, for the station or otherwise?

A. Not at all.

Q. What is offered for it?

A. $1200.00, and to put up there a powerful compress.

Q. Who makes the offer?

A. Man named Ragan—H. W. Ragan, of Ruston.

Q. His offer to pay you is to pay $1200.00 for the land and to put up and operate a cotton compress?

A. Yes, sir.

Q. What is the value of that land?

A. We think that is about the full value, or from there to $1500.00. If there was no press to be put upon it, we would not sell it under $1500.00.

Q. What is the advantage to the railroad company of having a compress placed upon that land?

A. Well, the railroad company will get a good deal of additional business——

Q. Hauling cotton to and from it?

A. And it is for the benefit of the railroad company to have the compress on its tracks.

135-152 Q. When did you make this agreement with Mr. Ragan; was it prior or subsequent to the receivership?

A. Well, the discussions were all prior to the receivership.

Q. Do you consider that that would be an advantageous sale for the railroad?

A. I do, most decidedly.

Q. And you say otherwise the railroad has no use for this lot?

A. No, except under the lease which we have, we lease it.

Q. What was the land leased for before?

A. $75.00 per annum.

By Mr. LEONARD:

Q. To Whitman?

A. Yes, sir.

By Mr. HALL:

Q. Now, in regard to the three lots, application to sell which is made by the receiver—the lots in Arcadia—were those lots ac-

quired for account of the V. S. & P. in the same way as the Ruston lots?

A. Yes, sir.

Q. The railroad has no use for that land?

A. None whatever.

Q. And the railroad company never will have any use for it for railroad purposes?

A. No, sir.

Q. What is offered for those lots?

A. $235.00.

Q. What is the value of those lots?

A. Well, there has been so little demand for them that we have no value for them. We get what we can. We have held these for some time, and we have worked it up to get this price. Here is a letter I had from our land manager, Mr. Moncure.

Q. What does he state?

A. The land agent, Mr. Moncure, states that he has made every effort to get $250.00 for the land, and that $235.00 is the best price that he can obtain.

By the MASTER:

Q. State here, in order to complete the record, your connection with the V., S. & P. railroad.

135–153 A. I have been connected with the V. S. & P. for seventeen years continuously; first, as assistant general manager, I think for a few months, then as comptroller, then as vice president, then as president and then as president and general manager.

Q. Which position you now hold?

A. Which position I now hold.

Q. I wish you would state why it is better to sell at private sale than at public auction?

A. These lots, if put up at public auction, would fetch nothing at all, or very little.

By Mr. HALL:

Q. I understand that you, through your land agent there, have to hunt up purchasers and make sales to them?

A. There is no general demand for those lots, and it is only by hunting up and finding a purchaser that you can sell a lot from time to time. It is only when a purchaser is urged to buy that a lot can be sold, and if they were offered at public auction there would be no competition, and they probably could not be sold at all.

By the MASTER:

Q. How have you heretofore disposed of the property—at private sale or public auction?

A. At private sale entirely. We have this land determined; we

have a man traveling around there, and we advertise very largely that the company has lands for sale.

The parties have no further evidence to offer, as declared by their counsel, and the hearing on this reference was closed at 4.15 o'clock same day.

WM. GRANT,
Special Master.

Master's No. 2.

United States Circuit Court for the Western District of Louisiana.

FARMERS' LOAN AND TRUST COMPANY
vs.
VICKSBURG, SHREVEPORT & PACIFIC R. R. Co. } No. 216.

To —— ——:

Please take notice that a hearing will be had before me, at my office, No. 701 Hennen building, in the city of New Orleans, on Wednesday, the 23d day of May, 1900, at 3.30 o'clock, p. m., upon the following matters referred to me by the order of the court, 135–154 entered in the above entitled cause under date of May 14th, 1900.

(2.) The petition of J. H. McCormick, receiver, praying authority to sell lot "Q," at Ruston, 400 x 240 feet, less one small lot 30 x 100 feet, for the price and sum of $1200.

New Orleans, La., May 19th, 1900.

WM. GRANT,
Sp'l Master.

(Endorsed: The within notice sent to each of the following named parties, by mail, postage paid, May 19th, 1900; Turner, McClure & Rolston, sols., Farmers' Loan & Trust Co., by H. H. Hall. Farrar, Jonas & Kruttschnitt, sols., Central Trust Co. F. P. Stubbs, sol., V. S. & P. R. R. Co., Monroe, La. A. H. Leonard, sol., J. H. McCormick, as rec. of land grant lands, Shreveport La. Harry H. Hall, sol., J. H. McCormick, rec. V., S. & P. R. R. Co. J. H. McCormick, receiver, V., S. & P. R. R. Co., Monroe, La. E. T. Lamkin, sol., for intervenor, Rob't B. Blanks, Monroe, La. A. H. Leonard, sol., for Henry D. Hearms, Shreveport, La. Wm. Grant, sp'l master.)

Master's No. 2.

United States Circuit Court for the Western District of Louisiana.

FARMERS' LOAN & TRUST CO.
vs.
VICKSBURG, SHREVEPORT & PACIFIC R. R. CO. } No. 216.

To —— ——:

Please take notice that a hearing will be had before me, at my office, No. 701 Hennen building, in the city of New Orleans, on Wednesday, the 23d day of May, 1900, at 3.30 o'clock, p. m., upon the following matters referred to me by the order of the court, entered in the above entitled cause under date of May 14th, 1900.

The petition of J. H. McCormick, receiver, praying for authority to sell three lots of ground in Arcadia, aggregating 100 x 120 feet, in block "A," for the price and sum of $235.00.

New Orleans, La., May 21st, 1900.

WM. GRANT,
Sp'l Master.

(Endorsed: The within notice sent to each of the following named parties, by mail, postage paid, May 21st, 1900: Farrar, Jonas & Kruttschnitt, sols. Central Trust Co. F. P. Stubbs, sol. V. S. & P. R. R. Co., Monroe, La. A. H. Leonard, sol. J. H. McCormick as rec. land grant lands, and Henry D. Hearms, Shreveport, La. E. T. Lamkin, sol. for Rob't B. Blanks, Monroe, La. Wm. Grant, sp'l master.)
135–155

Master's No. 2.

United States Circuit Court for the Western District of Louisiana.

FARMERS LOAN & TRUST COMPANY
vs.
VICKSBURG, SHREVEPORT & PACIFIC R. R. CO. } No. 216.

To —— ——:

Please take notice that a draft of the master's proposed report on the following matter is now ready for inspection in his office, No. 701 Hennen building, New Orleans, and that 4 days from May 24th, 1900, are allowed in which to file objections thereto.

The petition of J. H. McCormick, receiver, praying for authority to sell lot "Q," at Ruston, 400 x 240 feet, less one small lot 30 x 100 feet, for the price and sum of $1200.00 and three lots of ground in

Arcadia, aggregating 100 x 120 feet, in block "A," for the price and sum of $235.

New Orleans, La., May 24th, 1900.

WM. GRANT,
Special Master.

(Endorsed: The within notice sent by mail, postage paid, on May 24th, 1900, to each of the following named parties: H. H. Hall, sol. Farmers Loan & Trust Co., and J. H. McCormick, rec. V. S. & P. R. R. Co., New Orleans, La. Farrar, Jonas & Kruttschnitt, sols. Central Trust Co., New Orleans, La. F. P. Stubbs, sol. V. S. & P. R. R. Co., Monroe, La. A. H. Leonard, sol. J. H. McCormick, as rec. land grant lands, and Henry D. Hearms, Shreveport, La. E. T. Lamkin, sol. R. B. Blanks, intervenor, Monroe, La. Wm. Grant, sp'l master. Filed June 18th, 1900. J. B. Beattie, clerk.)

Clerk's Certificate.

Clerk's office, United States circuit court, western district of Louisiana.

I, J. B. Beattie, clerk of the United States circuit court, western district of Louisiana, hereby certify the foregoing 12 pages 135–156 to contain a true and correct copy of the petition to confirm master's report, together with the order of court thereon, also the master's report on the matter of the purchase of two passenger engines; one mail and baggage car; and the sale of land in Ruston and Arcadia, in the case of Farmers Loan and Trust Company *vs.* Vicksburg, Shreveport and Pacific Railroad Company, No. 216 on the docket of the United States circuit court, western district of Louisiana, Monroe division, as the same appears on file and of record in my office.

Witness my hand and seal of said court at the city of Shreveport, Louisiana, this the 9th day of June, A. D. 1900.

[SEAL.] J. B. BEATTIE, *Clerk.*

Certified Copy of Petition to Sell Land Grant Lands. Filed June 23, 1900.

United States Circuit Court, Fifth Circuit, Western District of Louisiana, Monroe Division.

FARMERS LOAN & TRUST COMPANY
vs.
VICKSBURG, SHREVEPORT & PACIFIC R. R. Co. } No. 216.

To the honorable judges of said court:

The petition of J. H. McCormick, receiver of the land grant lands, with respect represents:

That while under the administration of the Vicksburg, Shreve-

port and Pacific Railroad Company, the land grant lands affected by the first mortgage in favor of the Central Trust Company, trustee, having been sold from time to time, as purchasers were found. The course of proceeding was substantially as follows:

When an application to purchase some of said lands was made, the railroad company sent an inspector to examine said lands and report upon the value thereof. Major F. Y. Anderson, general land agent, who has in his office a complete description of said lands with plats, estimates, valuation, etc., etc., considered the price offered a satisfactory one, recommended the sale to Mr. Harvey, president of said company, and deeds were thereupon passed.

Your petitioner avers that he has examined the records in the office of said Major F. Y. Anderson and has examined
135–157 into the merit and practicability of the method heretofore employed to effect sales, and that he approves generally the same, and suggests the continuance of this method of effecting sales of said lands.

Now, your petitioner avers that by reason of the publicity given to said lands by said receivership, as well as to the recent prosperity of the lumber trade, there is much present demand for such lands as are timbered, there now being pending for consideration application for between 20,000 and 30,000 acres of said lands.

Your petitioner avers that there is no necessity to uselessly trouble the court with the consideration of each individual and separate application for the purchase of said lands, and that there should be a standing order of reference to the master with power to your petitioner to sell said lands and pass title thereto upon the final approval of said master.

And your petitioner avers that by selling said lands at private sale, a much larger price can be obtained than would result from the sale thereof at public auction, either in block or in lesser quantities.

Wherefore, your petitioner prays that he be authorized to sell for cash, the land grant lands herein, at private sale, for such price as shall be deemed by your petitioner and the aforesaid agents, to be the full and fair value of said lands, whenever such sales shall be approved by Wm. Grant, Esqr., special master.

That petitioner be authorized thereupon to make title to said purchasers of said lands; and that the matter of the sale and approval thereof of said land grant lands be referred to Wm. Grant, Esqr., special master, and that the approval of said master of said sales shall be final, and need not be referred to the court for sanction.

Petitioner prays for all general and equitable relief.

N. O. June 4th, 1900.

A. H. LEONARD,
Solicitor for J. H. McCormick, Receiver.

We consent to order as prayed for.
H. D. HEARMS,
By LEONARD, RANDOLPH & RENDALL,
Solicitors.

E. T. LAMKIN, *For Intervenors.*

135-158 J. H. McCormick, receiver, being sworn, says that the facts and allegations of the foregoing petition are true to the best of affiant's knowledge and belief.

J. H. McCORMICK, *Receiver.*

Sworn to and subscribed before me this 8th day of June, 1900.

[SEAL.] W. A. O'KELLY,
U. S. Com'r.

Order.

The foregoing petition and affidavit considered, let J. H. McCormick, receiver, be and he hereby is authorized to sell for cash at private sale, the land grant lands mortgaged to the Central Trust Co. under deed of trust dated January 1st, 1886, for such price as shall in the opinion of said receiver and of the agents and officers of the Vicksburg, Shreveport & Pacific Railroad Company, who are most familiar with the value of the said lands, appear to be a full and fair price therefor, but only after said sale shall have been approved by Wm. Grant, special master.

It is further ordered, that all pending and future applications for the sale of said lands by said receiver, be referred to said Wm. Grant, Esqr., special master, and upon the approval of said sales, by said master, the receiver be and he hereby is authorized to make the same, the action of the said master to be final and not to be referred to the court for its approval and ratification.

June 20th, 1900.

A. P. McCORMICK,
Circuit Judge.

Filed June 23rd, 1900.

J. B. BEATTIE, *Clerk.*

A true copy.
Attest:
[SEAL] J. B. BEATTIE, *Clerk.*

(Endorsed: No. 216. United States circuit court, fifth circuit, western district of Louisiana. Farmers Loan and Trust Company *vs.* Vicksburg, Shreveport and Pacific Railroad Company. Certified copy of petition to sell land grant lands.)

135–159 *Clerk's Certificate.*

UNITED STATES OF AMERICA,
Western District of Louisiana.

Clerk's office, United States circuit court, fifth circuit, western district of Louisiana.

I, Walter Jackson, clerk of the United States circuit court for the western district of Louisiana, do hereby certify that the within and foregoing 158 page- do contain true and correct copies of the documents named therein as the same appear in the caused — Farmers' Loan and Trust Company, trustee, *vs.* The Vicksburg, Shreveport and Pacific Railroad Company, *et als.* No. 216 on the docket of said court; also The Central Trust Company *vs.* The Vicksburg, Shreveport and Pacific Railroad Company No. 217 on the docket of said court.

Witness my hand and the seal of said court at the city of Shreveport, Louisiana, this the 25th day of October A. D. 1902.

[SEAL.] (Signed) W. JACKSON, *Clerk.*

136 *Transcript of Record.*

Supreme Court of the United States, October Term, 1889.

THE VICKSBURG, SHREVEPORT AND PACIFIC RAILROAD Company, Plaintiff in Error,
vs.
ROBERT N. SMITH, ELIZABETH A. SMITH, Wife of Marine Duvall; Elizabeth W. Smith, William L. Smith, and John S. Smith. } No. 276.

In error to the circuit court of the United States for the western district of Louisiana.

Filed December 13, 1886.

136–1 United States Circuit Court, Fifth Circuit and Western District of Louisiana.

ROBERT N. SMITH ET ALS.
vs.
GEORGE A. TURNER ET ALS. } No. 80.

A. H. Leonard & Land & Land, for plaintiffs; Wise & Herndon, for defendants.

Petition.

To the honorable the judges of the circuit court of the United States, fifth circuit and western district of Louisiana, at the city of Shreveport:

The petition of Robert N. Smith and of Elizabeth A. Smith, wife of Marine Duvall, herein joined, authorized, and assisted by her

husband, and of William L. Smith and of Elizabeth W. Smith, widow of the late James F. Smith, deceased, all residents of Shelby Co., State of Kentucky, and citizens of Kentucky, and of John S. Smith, a resident of Denver, Colorado, and a citizen of Colorado, with respect represents that they are the legal heirs of William W. Smith, deceased, late of the parish of Caddo and State of Louisiana, and as such have succeeded to all of his property, rights, and credits in said State.

Your petitioners now represent and show to the court that the State of La., through its constituted authorities, did sell to the said W. W. Smith, on the 14th day of May, 1853, a certain tract of land known as Silver Lake, situated in section 31, township 18, ranges 13 & 14, in the said parish of Caddo, containing an area of 186.57 acres, at the maximum price of $1.25 per acre, which at the time was paid into the treasury of the State by the said W. W. Smith, as fully appears and is shown by the certificate of sale, hereunto annexed and made part of this petition for greater certainty.

Your petitioners further represent and show to the court that after said sale the State of Louisiana, through its constituted authorities, did, on the 24th day of February, 1855, issue a patent to [for] said tract of land to the said W. W. Smith, as fully appears and is shown by said patent, hereunto annexed and made a part of this petition for greater certainty.

They further represent and show to the court that the State of La. claimed and acquired said tract of land as swamp and overflowed land granted to the State by the acts of Congress of 1849 & 1850, and that the State sold said land to the said W. W. Smith as swamp and overflowed land.

Your petitioners further represent and show to the court that all sales of land in Louisiana claimed as swamp and overflowed lands by the State, whether made by the United States Government or by the State government in La. and whether the land sold was of that character or not, were confirmed by the act of Congress,
136–2 approved March 2nd, 1855, entitled "An act for the relief of purchasers and locators of swamp and overflowed lands."

They further represent that said act of March 2nd, 1855, was extended to sales made after its passage and continued in force by the act of Congress of March 3rd, 1857, to confirm all selections of swamp and overflowed lands by the several States under the acts of Congress of 1849 & 1850.

Your petitioners now aver that the said act of Congress of March 2nd, 1855, for the relief of purchasers and locators of swamp and overflowed lands, confirmed the title of the said W. W. Smith to said tract of land known as Silver Lake, whether said land belonged to the State of La. under the swamp-land grants of Congress or whether it belonged to the United States.

Your petitioners further aver that the said W. W. Smith acquired a title to said land both from the State of La. and the United States, by purchase from the State and by confirmation of act of Congress

and that said title is paramount *is paramount* to all subsequent claims from the Government, and is indefeasible under the act of confirmation of the 2nd of March, 1855.

They further represent and aver that they are the just, true, and legal owners of the tract of land known as Silver Lake, which is illegally withheld from them and a part of which, containing 40 acres or more, is in the unlawful possession of one Geo. A. Turner, of the said parish of Caddo and State of La. and a citizen of said State, who refuses to deliver the said part of said land to your petitioners after amicable demand, as will be fully shown on the trial of this suit.

Your petitioners aver that said part of said land in the possession of the said Geo. A. Turner is worth at least six hundred dollars.

They further aver that your hon. court has jurisdiction over case herein presented.

Wherefore your petitioners pray for citation to the said George A. Turner and, after due and legal proceedings had, for judgment for the recovery of said tract of land in the possession of the said George A. Turner as aforesaid, with its — and revenues from judicial demand.

The- further pray for all orders, decrees, and writs necessary in premises, for cost-, and general relief.

(Sig.) A. H. LEONARD,
" LAND & LAND,
Att'ys for Petitioners.

(Endorsement:) No. 80. U. S. circuit court, western district of La. Robert N. Smith *et als. vs.* George A. Turner. Petition. I am security for costs. (Sig.) Leon M. Carter. Nov. 5, '85. Filed Nov. 6th, '85. (Sig.) J. W. Wheaton, cl'k. A. H. Leonard, Land & Land, att'ys.

136–3 *Citation.*

UNITED STATES OF AMERICA,
Western District of Louisiana.

Circuit Court of the United States, Fifth Circuit, Western District of Louisiana.

ROBERT N. SMITH ET ALS.
versus
GEORGE A. TURNER. } No. 80.

The President of the United States to George A. Turner:

You are her-by summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or to de-

liver your answer to the same, in the office of the clerk of the circuit court of the United States, fifth circuit and — district of Louisiana, in the city of Shreveport, in ten days after the service hereof, which delay is increased one day for every ten miles your place of residence is distant from the city of Shreveport, the place where the court is held.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at the city of Shreveport, this 6th day of November, A. D. one thousand eight hundred and eighty-five, and of the Independence of the United States of America the 109th year.

[Seal U. S. Circuit Court for the Western Dist. of La.]

Teste: (Sig.) J. W. WHEATON, *Clerk.*

Marshal's Return.

Rec'd in office Nov. 7th, 1885, and on the same day, month, and year I served a certified copy of the within citation and petition thereto attached — Geo. A. Turner, def't, in person, in the city of Shreveport, La.

(Sig.) J. C. JONES,
Dep'ty Marshal.

(Endorsement:) No. 80. U. S. circuit court, fifth circuit, — district of Louisiana. Robert N. Smith *et als. versus* George A. Turner. Copy of petition and citation inside, to be served on —— ——. Marshal's return. Filed Dec'r 1, '85. (Sig.) J. W. Wheaton, clerk.

Answer.

U. S. — Court, Western Dist. of La.

ROBERT N. SMITH ET ALS.
vs.
GEO. A. TURNER. } No. 80.

Now comes Geo. A. Turner, defendant in this suit, and for
136–4 answer to plaintiff's petition alleges that — in *his* possession of a portion of the property described in petition as a tenant of the Vicksburg, Shreveport & Pacific Railroad Company, whose domicil is at Monroe, Ouachita parish, La., and of which F. S. Bond is president, and prays that his said lessor and the owner of said property be made defendant herein and respondent be discharged.

(Sig.) WISE & HERNDON, *Att'ys.*

(Endorsement:) No. 80. Robert N. Smith *et als. vs.* Geo. A. Turner. Answer. Filed Feb'y 22, '86. (Sig.) J. W. Wheaton, cl'k.

Extract of Minutes of U. S. Circuit Court.

TUESDAY, *February* 23*rd*, 1886.

Court met pursuant to adjournment, his honor Aleck Boarman, district judge, presiding.

Order Substituting V., S. & Pacific R. R. as D'f'ts in Place of Geo. A. Turner.

R. N. SMITH ET ALS. *vs.* GEO. A. TURNER. } No. 80.

Ordered, that the Vicksburg, Shreveport & Pacific Railroad Company, of which F. S. Bond is president, be made defendants in the place of G. A. Turner, respondent herein.

Citation.

THE UNITED STATES OF AMERICA, *Western District of Louisiana.*

Circuit Court of the United States, Fifth Circuit, Western District of Louisiana.

ROBERT N. SMITH ET ALS. *vs.* GEO. A. TURNER. } No. 80.

To the Vicksburg, Shreveport and Pacific Railroad Company:

You are hereby summoned to comply with the demand contained in the petition & answer, of which a copy accompanies this citation, or to deliver your answer to the same, in the office of the clerk of the circuit court of the United States, fifth circuit and western district of Louisiana, in the city of Shreveport, in ten days after the service hereof, which delay is increased one day for every ten miles your place of residence is distant from Shreveport, the place where the court is held.

136-5 Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at the city of Shreveport, this 25th day of February, A. D. one thousand eight hundred and eighty-six, and of the Independence of the United States of America the 110th year.

[Seal U. S. Circuit Court for the Western Dist. of La.]

Teste: J. W. WHEATON, *Clerk.*
E. J. NOLAN, *D'y Cl'k.*

Endorsement: No. 80. United States circuit court, fifth circuit, western district of Louisiana. Robert N. Smith *vs.* Geo. A. Turner. Copy of petition and citation inside, to be served on —— ——. Filed March 6th, 1886. E. J. Nolan, d'y clerk.

Marshal's Return.

Rec'd in office Feb'y 25th, 1886, & on the 4th day of March, same year, I proceeded to Monroe, La., and after diligent inquiry I failed to find any one upon whom service could be made, after which I returned to Shreveport, and on the 6th day of said *of said* month & year I succeeded in finding F. S. Bond, president of the V., S. & P. R. R., and did, on that day, serve a certified copy of the within citation and copy — petition and copy of answer thereto attached by leaving same in his hand. This done in the city of Shreveport, La.

(Sig.) P. B. WEAKS, *D'y Mar.*

Interrogatories.

In Circuit Court of the United States for the Western District of Louisiana.

ROBERT N. SMITH ET ALS.
vs.
GEO. A. TURNER ET ALS. } No. 80.

Interrogatories propounded to James L. Lobdell, of the parish of East Baton Rouge, a material and competent witness on behalf of defendants in this case, whose answers will be used in evidence on trial thereof.

1st. What official position do you fill in the State of La.?

2nd. If register, please state whether you have in your custody the books, records, &c., relating to public lands belonging to the State, including such as have already been disposed of.

3rd. Please examine the records in your office and state whether or not they show a selection by the State of La., as swamp and overflowed land, — a certain tract of land known as Silver Lake, situated in section 31, township 18, ranges 13 & 14, in the parish of Caddo, containing an area of 186.57 acres. If yea, state when and how the selection was made.

136–6 4th. Please state whether or not the records show said land was ever included in any list of lands certified from the Land Department of the U. S. Gov't at Washington city as swamp

and overflowed lands donated to the State of La. by acts of 1849 & 1850.

(Sig.) FRANK P. STUBBS,
" WISE & HERNDON,
Att'ys for Defendants.

All legal objections as to competency & admissibility reserved, cross-examination waived, and we consent that a commission may issue to — the answers of above-named witnesses.

(Sig.) A. H. LEONARD,
" LAND & LAND,
Att'ys for Pl'ffs.

July 10, '86.

(Endorsement:) No. 80. Robert N. Smith *et als. vs.* Geo. A. Turner. Interrogatories. Filed July 12th, '86. E. J. Nolan, d'y clerk.

Copy of Commission Issued.

Circuit Court of the United States for the Fifth Judicial Circuit, Holding Sessions in and for the Western District of Louisiana.

To clerk of district court of the parish of East Baton Rouge, La.:

Know ye that, reposing special trust and confidence in your integrity and ability, we hereby authorize and require you that you call and cause to come before you James L. Lobdell, of parish of East Baton Rouge, and him duly examine on the annexed interrogatories, on oath, touching and concerning certain matters and things in a case now depending in the said court, wherein Robert N. Smith *et als.* are plaintiffs and Geo. A. Turner *et als.* defendants, and the same examinations, so taken and reduced to writing, you certify under your hand and seal and send enclosed to this court without delay, to be read in evidence on the trial of said cause, and send also this writ.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of Shreveport, this 12th day of July, anno Domini 1886, and the 111th year of the Independence of the United States of America.

J. W. WHEATON, *Clerk*,
Per E. J. NOLAN, *D'y Clerk.*

(Endorsement:) United States circuit court. No. 80. Robert N. Smith *et als. vs.* Geo. A. Turner *et als.* Commission.

136–7 *Copy of Interrogatories.*

In Circuit Court of the United States for the Western District of Louisiana.

ROBERT N. SMITH ET ALS.
vs.
GEO. A. TURNER ET ALS. } No. 80.

Interrogatories propounded to James L. Lobdell, of the parish of East Baton Rouge, a material and competent witness on behalf of defendants in this case, whose answers will be used in evidence on trial thereof.

1st. What official position do you fill in the State of La.?

2nd. If register, please state whether you have in your custody the books, records, &c., relating to public lands belonging to the State, including such as have already been disposed of.

3rd. Please examine the records in your office and state whether or not they show a selection by the State of La., as swamp and overflowed land, — a certain tract of land known as Silver Lake, situated in section 31, township 18, ranges 13 & 14, in the parish of Caddo, containing an area of 156.57 acres. If yea, state when and how the selection was made.

4th. Please state whether or not the records show said land was ever included in any list of land certified from the Land Department of the U. S. Gov't, at Washington city, as swamp and overflowed lands donated to the State of La., by acts of 1849 & 1850.

(Sig.) FRANK P. STUBBS,
" WISE & HERNDON,
Att'ys for Defendants.

All legal objections as to competency & admissibility reserved, cross-examin-tion waived, and we consent that a commission may issue to take the answers of above-named witnesses.

(Sig.) A. H. LEONARD,
" LAND & LAND,
Att'ys for Pl'ffs.

July 10, '86.

Filed July 12th, 1886.

E. J. NOLAN, *D'y Clerk.*

A true copy.
Attest:

E. J. NOLAN, *D'y Clerk.*

(Endorsement:) No. 80. Robert N. Smith *et als. vs.* Geo. A. Turner
Copy of interrogatories.

136–8 *Answers to Interrogatories.*

STATE OF LOUISIANA, }
Parish of East Baton Rouge. }

CLERK'S OFFICE.

Be it known that on the fifteenth day of July, A. D. one thousand eight hundred and eighty-six (1886), by virtue of a commission directed to the clerk & recorder of said parish and State from the hon. circuit court of the United States for the western district of Louisiana, personally came and appeared Hon. James L. Lobdell, register of the land office of the State of Louisana, which said office is domiciliated at the State capital, in the city of Baton Rouge, who, after having been by me duly sworn according to law, deposes as follows in answer to interrogatories propounded to him in suit of Robert N. Smith *et als.* vs. George A. Turner *et als.*, No. 80, circuit court of the United States for the western district of Louisiana, said answers to be used in evidence on the trial of above-mentioned suit, to wit:

Answer to interrogatory 1st. I am the register of the State land office.

Answer to interrogatory 2d. I have in my custody the books, records, &c., relating to public lands belonging to the State of La., including such as have already been disposed of.

Answer to interrogatory third (3d). The records of this office do not show that section 31, T. 18, range 13 and 14 west, N. W. district were ever selected as swamp land.

Answer to interrogatory 4th. There is nothing to show that said land was ever included in any list of land certified from the Land Department of the United States Government, at Washington city, as swamp and overflowed lands donated to the State of Louisiana by acts of 1849 and 1850.

(Sig.) JAMES L. LOBDELL, *Register.*

Sworn and subscribed to before me on this 15th day of June, A. D. 1886.

(Sig.) CHAS. BERGERON, *D'y Cl'k.*

I, Charles Bergeron, deputy clerk and recorder, duly qualified, in and for the parish of East Baton Rouge, State of Louisiana, do hereby certify that the above and foregoing are true and corrects answers to interrogatories herein propounded by def'ts to Hon. James L. Lobdell, State register of land office at this place, as taken down by me under commission of date July 12th, A. D. 1886, and directed to the cl'k of the 17th judicial district court of the parish of East Baton Rouge, State of Louisiana.

In witness whereof I hereunto subscribe my hand and affix the seal of our said court this 15th day of July, A. D. 1886.

(Sig.) CHAS. BERGERON, *D'y Cl'k.*

Endorsed: No. 80. U. S. C. C. Robert N. Smith *et als. vs.* Geo. A. Turner. Answers to interrogatories. Filed July 17th, 1886. E. J. Nolan, d'y cl'k.

136-9 *Exception.*

In Circuit Court of the United States for the Western Dist. of La.

ROBERT N. SMITH ET ALS.
vs.
GEO. A. TURNER ET ALS. } No. 80.

Now come defendants and specially deny that plaintiffs are the legal heirs of W. W. Smith, deceased, and, if heirs, deny that they are his sole heirs.

Therefore except to their capacity to *to* sue and stand in judgement.

(Sig.) FRANK P. STUBBS,
" WISE & HERNDON,
Att'ys for Defendants.

(Endorsed:) Robert N. Smith *et als. vs.* Geo. A. Turner *et als.* Exception. Filed July 20th, 1886. (Sig.) J. B. Beattie, d'y cl'k.

Extract of Minutes of U. S. Circuit Court.

WEDNESDAY, *July* 21*st*, 1886.

Court met pursuant to adjournment, his honor Aleck Boarman, district judge, presiding.

R. N. SMITH ET ALS.
vs.
GEO. A. TURNER ET ALS. } Jury Waiver on Trial of Exception Filed Herein.

Exception taken up, tried, and same overruled; exception & plea of *res adjudicata* filed and same assigned for trial on Saturday, July 24th, 1886.

Exception & Plea of Res Adjudicata.

In Circuit Court of the United States for the Western District of Louisiana.

ROBERT N. SMITH ET ALS.
vs.
GEO. A. TURNER ET ALS. } No. 80.

Now comes the Vicksburg, Shreveport and Pacific Railroad Company, made party defendants herein, and, without answering to the merits of this case, file this their plea and exception of *res adjudicata* to plaintiffs' action on the following grounds, to wit: That in a suit entitled The State of Louisiana *vs.* W. W. Smith, No. — on the docket of the district court of Caddo parish, La., filed ——, 1857, defendant put at issue the validity and legality of his title 136–10 to the land described in plaintiffs' petition—under and by virtue of the certificate and patent described in said petition, and upon a final hearing judgment was rendered in said suit decreeing said certificate and patent null and void, decreeing the cancellation of same, & ordering them to be delivered to the State of Louisiana, plaintiff therein; all of which will fully appear by reference to a certified copy of pleadings, evidence, and judgment in said suit hereto annexed and made part hereof.

That plaintiffs in this suit, the heirs of W. W. Smith, are bound by the judgment in said suit, which is to them *res adjudicata;* and defendants therefore pray that their suit may be dismissed.

(Sig.) FRANK P. STUBBS, *Counsel.*
" W. H. WISE,
Att'y V., S. & P. R. R.

(Endorsed:) 80. Rob't N. Smith *et als. vs.* Geo. A. Turner *et als.* Exception & plea of *res adjudicata.* Filed July 21st, 1886. (Sig.) J. B. Beattie, d'y cl'k.

Document Filed in Evidence.

To the hon. the judge of the 10th judi-al district of the State of Louisiana in and for the parish of Caddo:

The petition of John Brown, tutor of Robert N. Smith and John L. Smith, minor children of Jno. K. Smith, dec'd, late of the State of Kentucky, and Wm. L. Smith & Elizabeth A. Duvall, wife — M. Duvall, authorized and assisted by her said husband, all of the State of Kentucky, with respect represents that as the children, the legal heirs, and representatives of the said Jno. K. Smith, dec'd, who was

the brother of the late Wm. W. Smith, dec'd,—which was opened in the parish of Caddo; that James F. Smith, of the county of Shelby, State of Kentucky, now present in the parish of Caddo, owns the other half; that said succession was administered by Jno. W. Smith, and that the said Jno. W. Smith, adm'r as aforesaid, has filed his final account, as appears by mortuary proceedings in succession of said Wm. W. Smith, dec'd.

Petitioners represent that they wish a partition of all of the assets belonging to said succession between themselves and the said James F. Smith; that said partition can be made in kind.

The premises considered, petitioners pray that the said James F. Smith be cited to answer this petition; that a commission issue for inventory and appraisement of property and assets of succession to serve as basis of partition, and that a commission issue to some duly qualified notary public to make partition of said assets, and prays for all orders and decrees necessary & for general relief.

(Sig.) NUTT & LEONARD.

I accept service of foregoing petition, waive citation & time, & consent to the partition.

(Sig.) JAMES F. SMITH.

136–11 District Court, Caddo Parish.

JOHN BROWN, Tutor, ET AL.
vs.
JAMES F. SMITH. } No. —.

In this case, by reason of the law and evidence, it is ordered, adjudged, and decreed that the prayer of within petition be granted, and that there be a partition in kind of all the property belonging to succession of W. W. Smith, deceased, between the plaintiffs and defendant, plaintiffs to have one-half. It is further ordered that a commission issue to C. W. Lewis, recorder & *ex officio* notary public of said parish, directing him to take an inventory and appraisement of said property and to make a partition in kind of said property, and that Jno. W. Smith and Jos. B. Smith be appointed experts to assist said notary in making said partition.

Done and signed, at office, this January 7th, A. D. 1868.

(Sig.) R. J. WRIGHT, *Clerk.*

Endorsed: No. 7779. John Brown, tutor, *et al. vs.* Jas. F. Smith, Pet'n for partition. Filed January 7th, 1868. (Sig.) S. C. Wright. dep. clerk.

To the hon'l- the judge of the 10th judicial district of the State of La., holding sessions of court in and for the parish of Caddo:

The petition of John Brown, tutor of Robert N. Smith & John L. Smith, minor children of John K. Smith, deceased, late of the State

of Kentucky, and of Wm. L. Smith & Elizabeth A. Smith, wife of M. Duvall, authorized and assisted by her said husband, all residents of the State of Kentucky, with respect represents that they recently, viz., on 7th day of January, 1868, instituted suit in your hon'bl- court against Jas. F. Smith, and in said suit a decree was rendered directing a partition of all the property belonging to succession of W. W. Smith, dec'd, formerly of said parish of Caddo, between petitioners and said Jas. F. Smith, who are the heirs of said W. W. Smith; all of which will appear by reference to record in said suit No. 7779 on your honor's docket.

Petitioners represent that in accordance with said decree a partition has been regularly made by C. W. Lewis, recorder & *ex officio* notary public of said parish, a *procès-verbal* of which is herewith presented.

Petitioners pray that said partition, so made, be homologated, approved, and made the judgment of the court, and that the petitioners be declared the owners of the property therein allotted to them, and that said Jas. F. Smith be declared owner of the property therein allotted to him.

They ask that said James F. Smith, of the State of Kentucky, now in the parish of Caddo, be cited to answer hereto, and that after all legal notices and delays judgment be rendered as prayed for above. They ask for all orders and decrees necessary in the premises and for general relief.

(Sig.) NUTT & LEONARD,
Att'ys for Petitioners.

136–12 I accept—of within petition, waive citation and time, and join in the prayer of said petition.

(Sig.) JAMES F. SMITH.

District Court.

JOHN BROWN, Tutor, ET AL.
vs.
JAS. F. SMITH. } No. 7779.

By reason of the law and evidence it is ordered, adjudged, and decreed that the prayer of within petition be granted, and that the partition of the property belonging to the succession of W. W. Smith, dec'd, between the heirs thereof, made by C. W. Lewis, recorder and *ex officio* notary public, on the 13th day of January, A. D. 1868, a *procès verbal* of which has been filed in office of clerk of district court of said parish, be, and the same is hereby, homologated, approved, and made the judgment of the court, and that the within-named petitioners, as children of J. K. Smith and heirs of said W. W. Smith, be, and are hereby, declared the owners of the property allotted to them in said partition, and that Jas. F. Smith be, and is

hereby, declared owner of the property allotted to him in said partition.

It is further ordered and decreed that the costs of effecting partition be borne equally by said petitioners, heirs of J. K. Smith, and by said James F. Smith.

Done and signed in chambers on this the 13th day of January, A. D. 1868, in parish of Caddo.

(Sig.) JAS. J. WEEMS,
Judge 10th Jud'l Dist.

Endorsed: No. 7779. John Brown, tutor, *et al. vs.* Jas. F. Smith. Petition. Filed Jan'y 14th, 1868. (Sig.) R. J. Wright, clerk.

CLERK'S OFFICE, CADDO PARISH.

I hereby certify that the foregoing five pages contain true and correct copies of the original petition for and judgment decreeing partition; also petition for and judgment homologating said partition, as the same now appear on file and of record in my office.

Given under my hand and seal of office, at Shreveport, Louisiana, on this the 20th day of July, A. D. 1886.

[SEAL.] (Sig.) W. G. BONEY,
Deputy Clerk 1st Judicial Dist. of La.

Endorsed: No. 7779. John Brown, tutor, *et al. vs.* James F. Smith. Petitions and judgments. 80. Exhibit "A." Copy. Filed July 21st, 1886. (Sig.) J. B. Beattie, d'y cl'k. Ordered that the court do now adjourn until Saturday, July 24th, 1886.

136–13 R. N. SMITH *vs.* GEO. A. TURNER. } No. 80. Case Assigned for Trial on Wednesday, July 28th, 1886.

SATURDAY, *July 24th*, 1886.

Ordered that court do now adjourn until Wednesday, July 28th, 1886.

Documents Filed in Evidence July 26th, '86.

In the Circuit — of the United States for the District of Louisiana.

HENRY R. JACKSON ET AL.
vs.
VICKSBURG, SHREVEPORT & TEXAS RAILROAD CO., North Louisiana & Texas Railroad Co., and Other Defendants. } No. 5033.

Whereas the Vicksburg, Shreveport and Texas Railroad Company, a corporation of the State of Louisiana incorporated by an

act approved the 28th day of April, 1853, and promulgated as act No. 228 of the session of the Legislature of that year, and in other acts of the General Assembly supplementary thereto and in furtherance of the object of the same, under the power and authority granted to the said company, did execute a mortgage bearing date the first day of September, 1857, to secure the payment of a uniform series of two-thousand first-mortgage bonds, payable to John Ray or bearer, each bearing even date with the mortgage and payable twenty years from date, with coupons for semi-annual interest, each being for the sum of forty dollars, or nine pounds sterling, and each bond for one thousand dollars, or two hundred and twenty-five pounds sterling; and the said corporation by the said mortgage did impose upon the property therein a first-mortgage lien in favor of the holders of said bonds and each of them for the payment of the principle and the interest of said bonds, which property consists of the entire railroad of the said company, extending from a point opposite to the city of Vicksburg on the Mississippi river, to the boundary lines of the States of Louisiana and Texas, a distance of one hundred and ninety miles, more or less, by way of Monroe and Shreveport, then finished or to be completed, and all the rights of way, lands, property, franchises, rights, and appurtenances, water stations, warehouses, depots, depot grounds, structures, and improvements which have been or may be constructed thereon, and all the engines, locomotives, wagons, machinery, utensils, and effects generally of every nature and description, or which may be placed upon or become attached to the same, without exception or reservation, and, under the head of lands, all the lands to be acquired by the company for any purpose, for right of way, depots, depot grounds, or for sale for profit as town lots or otherwise; and specially it was intended to include the lands, together with all of the rights of the company thereto, being some four hundred and twenty thousand nine hundred and twenty-four acres, more or less, donated by the Congress of the United States to the State of Louisiana by 136–14 act approved the third day of June, 1856, and granted to this company to aid in the construction of the railroad aforesaid by acts of the General Assembly approved June third, 1856, and eleventh of March, 1857, which lands lie along the line of the railroad and contiguous thereto and within — miles of the railroad; and

Whereas the said Vicksburg, Shreveport and Texas Railroad Company did put in circulation to *bona fide* purchasers seven hundred and sixty-one of the series of bonds aforesaid, and did, after the issue thereof, during the year 1864, and from thence till December, A. D. 1866, fail to pay the interest thereon to the holders of the said bonds, the suit of the title mentioned in the caption of this deed was commenced and has been prosecuted against the said Vicksburg, Shreveport and Texas Railroad Company, The North Louisiana and Texas Railroad Company, John S. Ludeling, John Ray, Francis P. Stubbs, Wesley J. Q. Baker, Henry

M. Bry, Joseph F. McGuire, John A. McGuire, Robert Ray, Joseph P. Crossley, Charles W. Phillips, Robert C. Strother, Christopher H. Dabbs, George C. Waddell, and William M. Pinkard as defendants; and such proceedings were had in the said cause in the circuit court of the United States that a decree was rendered therein on the third day of July, 1879, now of record in said cause, wherein and whereby the validity of the mortgage aforesaid was fully established against each and all of the parties aforesaid and its obligation recognized as paramount to any claim, right or estate therein held by any of the said parties except as hereafter excepted in this deed, and that the said property specified therein, with all of the additions, ameliorations, improvements, constructions, and works made by the defendants thereon during their occupation of the same, should be exposed to sale for the purpose of paying the debt due to the holders of the bonds issued *bona fide* and held by the plaintiffs in the said cause, and the said decree did declare that the property aforesaid should be subject to a claim of the North Louisiana and Texas Railroad Company for the sum of two hundred and ninety-four thousand six hundred and six $\frac{5}{100}$ dollars, with five per cent. interest thereon from the 13th April, A. D. 1875, until payment was made, as defined in the decree aforesaid and is particularly described therein, and, that this sale should be made, the said court appointed Francis A. Woolfley as a special master to superintend the said sale and to make the same under the direction of the said decree of the circuit court of the United States in the cause aforesaid:

Know all men by these presents that I, Francis A. Woolfley, master as aforesaid, under the direction of said decree, did cause all of the property of whatever kind included in the said mortgage of the said Vicksburg, Shreveport and Texas Railroad Company, real or personal, and the railroad of the said company, commencing on the Mississippi river opposite to Vicksburg and extending to the Texas line by way of Monroe and Shreveport, with all of the rights, privileges, franchises, and immunities granted to the said company in any acts of the General Assembly, and all of the additions, ameliorations, improvements, constructions, and works thereon made by any of the defendants during their occupation of
136–15 the same, with the rights of way, depots, depot grounds, water stations, buildings, locomotives, engines, machinery, fixtures or whatever else is in use upon said railroad or attached thereto or that appertains to the same, without reservation and exception, and all the lands of whatever description owned by the said corporation or which have been acquired by the same for the said company, including the lands donated by the State of Louisiana in the acts of the General Assembly in 1856 and 1857, as specified in the mortgage to be advertized for sale on the first day of December, 1879, between the hours — 12 m. and 3 o'clock p. m.—say at one (1) o'clock p. m. — in bulk, for cash, to the highest bidder, publishing notice in three newspapers for six consecutive weeks before the day of the sale, three times each week, one paper published at New Orleans, to wit, the

New Orleans Times; in paper published in the city of Atlanta, Georgia, to wit, the Atlanta Daily Post, and one published in the city of New York, to wit, the New York Commercial Advertiser; and on the first day of December, 1879, at the time and place stated in the notices and in the manner required by the said decree, I did sell the same at public auction to the last and highest bidders for the said property, viz., Henry R. Jackson, Lemuel P. Grant, William M. Wadley, Edward Hooper, and H. B. Plant, and the survivors or survivor of them, they being a committee appointed by a majority of the bon-holders, with authority to make the purchase for them and for those who should be associated with them under the terms of the decree of the said court directing the sale of the property aforesaid, for the sum of sixty thousand dollars, which was paid to me by the said committee, in lawful money of the United States, on the spot.

Wherefore, and in consideration of the premises and the payment of the sum of money aforesaid by the said committee and the confirmatory order of the said court authorizing the delivery of the property to the purchasers and the execution of a deed to them, I, the said Francis A. Woolfley, special master as aforesaid, do hereby grant, bargain, sell, and convey to the said Henry R. Jackson, Lemuel P. Grant, William M. Wadley, Edward Hoopes, and H. B. Plant and to the survivors and survivor of them, in full property and dominion, the railroad of the Vicksburg, Shreveport and Texas Railroad Company as constructed or to be constructed under the charter and plans of survey or location, with all of the additions, ameliorations, improvements, constructions, and works of the defendants or any of them to the same or in connection therewith, with all of the rights, privileges, franchises, immunities granted to the said corporation in respect to the same, and all the lands acquired by grant or donation from the United States or the State of Louisiana under the acts before mentioned and specified in the mortgage, and all of the real and personal property and effects comprehended in the terms of the mortgage or used in any connection with the said railroad; to have and to hold the same in full property and dominion, freed and discharged from the right, title, claim, estate, and demand of the said Vicksburg, Shreveport and Texas Rail-
136–16 road Company and of the defendants and every one of them, except that the lien and mortgage of The North Louisiana and Texas Railroad Company for the sum of two hundred and ninety-four thousand six hundred and six $\frac{8}{100}$ dollars, with interest at the rate of five per cent. per annum from the 13th April, 1875, established by the decree of this court bearing date the third day of July, 1879, and the remedies to enfor-e the same, therein contained, are reserved without diminution.

And the said Henry R. Jackson, Lemuel P. Grant, Wm. M. Wadley, Edward Hoopes, and H. B. Plant accept this deed, for the uses and purposes therein mentioned, for themselves and the parties interested.

As witness my hand, the master aforesaid, and our hands, the committee aforesaid, this 20th day of December, A. D. 1879.

(Sig.) F. A. WOOLFLEY,
Special Master.
" HENRY R. JACKSON,
" LEMUEL P. GRANT,
" WM. M. WADLEY,
" EDWARD HOOPES,
" H. B. PLANT,
Committee,

(Sig.) By JNO. A. CAMPBELL,
Solicitor and Att'y for the said Parties.

Filed in court —.

Executed in the presence of—
(Sig.) S. V. COUPLAND.
" R. B. HOLLY.

STATE OF *Orleans* LOUISIANA, }
Parish of Orleans. }

By this instrument of declaration be it known that on this twentieth day of December, in the year one thousand eight hundred and seventy nine, before me, John David Crawford, a notary public in and for the parish of Orleans, State of Louisiana, duly commissioned and sworn, personally came and appeared John A. Campbell and Francis A. Woolfley, of the city of New Orleans, the parties to the foregoing deed, who are well known to me as such, and who signed and executed the same in my presence and that of the subscribing witnesses, and declared that they signed and executed the annexed instrument for the uses and purposes therein set forth.

In testimony whereof I hereunto set my hand and seal of office.

(Sig.) J. D. CRAWFORD,
Notary Public.

Filed Dec. 24th, 1879.

I, the undersigned, recorder in and for the parish of Ouachita, State of Louisiana, hereby certify that said act of sale was duly inscribed in the Record of Conveyance Book " X," pages 433, 434, 435, 436, 437, and 438.

136-17 Witness my hand and seal of office the day and date above filed.

(Sig.) R. W. McCLENDON, JR.,
D'y Recorder for Ouachita Parish, Louisiana.

STATE OF LOUISIANA,
Parish of Madison.

Filed December 29th, 1879, for record. RECORDER'S OFFICE.

I, Robert Barnes, recorder in and for said parish and State, do hereby certify that the foregoing act of sale, together with all documents attached, has been duly recorded in Notarial Record Book "I," pages 30, 31, 32, & 33.

In testimony whereof I hereunto sign my name and affix my seal of office this 31st day of December, A. D. 1879.

(Sig.) ROBERT BARNES,
Recorder of Madison Parish, La.

PARISH OF EAST CARROLL,
State of Louisiana.

Filed for record Jan. 5th, 1880.

I, Benjamin H. Lanier, deputy recorder in and for said parish and State, duly appointed and qualified, do hereby certify that the foregoing act of sale, together with all documents attached thereto, has been duly recorded in this office in Notarial Book "Q," folios 111, 112, 113, and 114.

In testimony whereof I hereunto sign my name and affix the seal of this office on this the sixth day of January, A. D. 1880.

(Sig.) R. H. LANIER,
D'y Recorder.

STATE OF LOUISIANA,
Parish of West Carroll.

Filed January 8th, 1880, for record, sig. W. A. Hendrick, recorder.

I, W. A. Hendrick, recorder in and for said parish and State, do hereby certify that the foregoing act of sale, together with all documents attached, has been duly recorded in Notarial Book "A," pages 158, 159, 160, and 161.

In testimony whereof I hereunto sign my name and affix my seal of office this 8th day of January, A. D. 1880.

(Sig.) W. A. HENDRICK,
Recorder for Parish of West Carroll.

136–18 STATE OF LOUISIANA,
Parish of Franklin.

Filed for record January 9th, 1880, sig. John C. T. Corkern, recorder, parish of Franklin.

I, John C. T. Corkern, recorder of the parish and State aforesaid, do hereby — that the above and foregoing deed, together with all documents thereto attached, also recorder's certificates, have this day

been duly recorded in my office in my Notarial Book "H," folios 714, 715, 716, 717, 718, and 719.

Witness my official signature and seal on this 9th day of January, A. D. 1880.

(Sig.) JOHN C. T. CORKERN,
Recorder, Parish of Franklin.

STATE OF LOUISIANA, }
Parish of Richland. }

Filed for record January 12th, 1880, sig. Wiley P. Mangham, recorder, parish of Richland.

I, Wiley P. Mangham, recorder of the parish of Richland and State aforesaid, do hereby certify that the above and foregoing deed, together with all documents thereto attached, also recorder's certificates, has this day been duly recorded in my office in Notarial Book "G," pages 316, 317, 318, 319, 320, 321, 322, and 323.

Witness my official signature and seal of office this January 12th, 1880.

(Sig.) WILEY P. MANGHAM,
Recorder of Parish of Richland.

STATE OF LOUISIANA, }
Parish of Morehouse. }

Filed for record January 13th, 1880, sig. H. H. Naff, recorder, Morehouse parish.

I, Henry H. Naff, recorder of Morehouse parish, do hereby certify that the foregoing deed and certificates of acknowledgement thereto attached and the six foregoing certificates of record were this day duly recorded in my office in Notarial Record Book "L," pages 545, 546, 547, 548, 549, 550, and 551.

Witness my hand and seal of office this 13th January, A. D. 1880.

(Sig.) H. H. NAFF,
Recorder, Morehouse Parish.

STATE OF LOUISIANA, }
Parish of Union. }

RECORDER'S OFFICE.

Filed for record January 15th, 1880, sig. James M. Smith, deputy recorder, Union parish, La.

I, James M. Smith, d'y recorder of Union parish, do hereby certify that the foregoing deed and certificate of acknowledge-
136–19 ment thereto attached and the seven foregoing certificates of record were this day duly recorded in my office in Notarial Record Book "R," pages 348, 349, 350, 351, 352, and 353.

Witness my official signature and seal of office this January 15th, A. D. 1880.

(Sig.) JAMES M. SMITH,
D'y Recorder for Union Parish, La.

STATE OF LOUISIANA, }
Parish of Lincoln. }

Filed for record January 16th, 1880, sig. H. S. Liggin, recorder in and for the parish of Lincoln, La.

I, H. S. Liggin, recorder in and for the parish of Lincoln and State aforesaid, do hereby certify that the foregoing deed and certificate of acknowledgement thereto attached and the eight foregoing certificates of record were this day duly recorded in my office in Notarial Record Book "B," pages 95, 96, 97, 98, 99, 100, 101, and 102.

Witness my official signature and seal of office this January 16th, A. D. 1880.

(Sig.) H. S. LIGGIN,
Recorder, Parish of Lincoln.

STATE OF LOUISIANA, }
Parish of Jackson. }

Filed for record this January 17th, 1880, sig. G. W. Edmundson, recorder.

I, G. W. Edmundson, recorder in and for the parish and State aforesaid, do hereby certify that the foregoing deed, acknowledgement, and the nine certificates of record have this day been duly recorded in Notarial Record, letter "A," pages 48, 49, 50, 51, 52, 53, 54, and 55.

Witness my hand and official signature this 17th day of January, A. D. 1880.

(Sig.) G. W. EDMUNDSON, *Recorder.*

STATE OF LOUISIANA, }
Parish of Bienville. }

RECORDER'S OFFICE.

Filed for record January 19th, 1880, sig. John M. Head, recorder.

I, John M. Head, recorder in and for the parish of Bienville, State aforesaid, do hereby certify that the foregoing deed, certificate of acknowledgment, and the ten certificates of record have this day been duly inscribed in this office in Notarial Book "L," folio- 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149.

Witness my official signature and seal of office this January 19th, A. D. 1880.

(Sig.) JNO. M. HEAD,
Recorder, Parish of Bienville, La.

136-20 STATE OF LOUISIANA, }
Parish of Claiborne. }

Filed for record January 19th, 1880, sig. J. R. Ramsey, recorder, parish of Claiborne, La.

I, J. R. Ramsey, recorder in and for the parish and State aforesaid, hereby certify that the within deed and certificate of acknowledgement, together with the eleven certificates of record, have been duly recorded in my office in Conveyance Book "L," pages 716, 717, 718, 719, and 720.

Given under my hand and seal of office this January 19th, 1880.

(Sig.) J. R. RAMSEY.
Recorder, Parish of Claiborne, La.

STATE OF LOUISIANA, }
Parish of Webster. }

RECORDER'S OFFICE.

Filed for record January 20th, 1880, sig. George McWeam, recorder, Webster parish, Louisiana.

I do certify that the within and foregoing deed and certificate of acknowledgment, together with the twelve certificates of record, have this day been duly recorded in my office in Book "3" of Conveyances, folios 193, 194, 195, 196, 197, 198, 199, and 200.

Witness my hand and seal of office, at Minden, Louisiana, this 20th day of January, A. D. 1880.

(Sig.) GEORGE McWEAM,
Recorder, Webster Parish, La.

STATE OF LOUISIANA, }
Parish of Bossier. }

Filed and recorded in Vol. "11" of Conveyances, pages 355 to 364, inclusive.

Witness my hand and seal of office, at Bellevue, Louisiana, this 21st January, A. D. 1880.

(Sig.) J. H. KEYSER,
D'y Recorder.

STATE OF LOUISIANA, }
De Soto Parish. }

RECORDER'S OFFICE.

I hereby certify the foregoing deed, acknowledgement, and certificates of record have on this day been duly recorded in this office in Book of Conveyances "T," pages 357 to 363, inclusive.

Witness my signature and seal of office, at Mansfield, De Soto parish, La., on this the 23rd day of January, A. D. 1880.

(Sig.) D. M. HERRIOTT,
Recorder, De Soto Parish, La.

STATE OF LOUISIANA, }
Parish of Caddo. }

I hereby certify that the above and foregoing is a true
136–21 and correct copy of the original deed, certificate of acknowledgment and certificates of record, as the same appears on record in the clerk and *ex officio* recorder's office of the parish of Caddo, La.

Given under my hand and official seal this the 14th day of July, A. D. 1886.

(Sig.) W. P. FORD, *Clerk.*

Endorsed: No. 5033. U. S. circuit court. Henry R. Jackson *et al. vs.* V., S. & T. R. R. Co. *et al.* Deed of sale to Henry R. Jackson *et al.* Filed and recorded Jan. 20th, 1880. (Sig.) E. W. Durant, recorder. Copy. Filed July 26th, 1886. (Sig.) Aleck Boarman, judge.

General Land Office Certificate.

F. (4–205.) T. R. B. J. D. S.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *April 13th*, 1881.

I, C. W. Holcomb, acting Commissioner of the General Land Office, do hereby certify that the annexed copy of decision of the Hon. Secretary of the Interior, of Mar. 18, 1881, in the case of Jas. A. King and Ambroise Martell *vs.* Vicksburg, Shreveport and Texas Railroad Company is a true and literal exemplification from the original on file in this office.

In testimony whereof I have hereunto subscribed my
[SEAL.] name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

(Sig.) C. W. HOLCOMB,
Acting Commissioner of General Land Office.

Copy of Decision of the Hon. Sec. of Interior Annexed.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *March* 18, 1881.

The Commissioner of the General Land Office.

SIR: I have examined the case of James A. King and Ambroise Martell *v.* The Vicksburg, Shreveport and Texas Railroad Company, involving lots 1, 2, 3, 4, 5, 6, 7, 8, and 9, of section 31, town. 18 north, range 13 west, Natchitoches district, Louisiana, on appeal from your decision of October 9, 1879, in favor of the company.

The record shows that the greater portion of the township was surveyed in the year 1837, as shown by plat approved February 13th, 1837, but said tracts were not shown thereon, section 31 being left blank; that on March 19, 1838, a plat was approved showing these tracts as being covered by a body of water known as Silver Lake, which had been regularly meandered on the 2d and 3d of that month; that on October 10, 1857 (the waters of said lake having receded), the surveyor general approved and forwarded to your office a supplemental plat representing the tracts in question allotted as aforesaid, having perfected the original map of said township by protraction.

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The record further shows that said tracts lie within six miles' limit of the grant, by act of June 3, 1856 (11 Stats., 18), to the State of Louisiana to aid in the construction of railroads in said State; that these tracts were approved for the benefit of said railroad October 7, 1859, and reapproved January 10, 1874, that on January 1, 1858, your office approved the action of the register rejecting the application of one William S. Pike to locate internal-improvement warrents upon said tracts, because they were reserved for the railroad grant. On the 5th and 14th of May, 1858, the Commissioner reaffirmed his decision, which my predecessor, Mr. Secretary Thompson, affirmed June 17, 1858. September 28, 1872, certain parties, to wit, F. S. Legardy and A. Jones, made homestead entries of said tracts, but their entries were canceled November 20, 1872, because of conflict with the grant aforesaid.

The case now arises upon the application of plaintiffs (King and Martell) to make additional homestead entries of the tracts in question, which they allege were not "land" at the date of said grant nor for years thereafter, being covered by the waters of Silver Lake as late as the year 1866; that the plat approved October 10, 1857, was made without actual survey, and cannot therefore be considered as establishing the status of these tracts at that time, and on August 2, 1878, they, by their counsel, made a motion for a hearing and investigation to establish said allegations. In support of said motion it is urged by counsel—

1. That the certifications of 1859 and 1874 are void under section 2449, Revised Statutes; and

2. That the said decision of Secretary Thompson is not binding, the same having been in respect to persons not now in interest.

In disposing of the case as thus presented it is only necessary to say that the subject-matter involved was decided against the appeal of a former claimant upon these identical lands (with the exception of lot 3) by my predecessor, Mr. Secretary Delano, March 20, 1872, who held that the lands were originally a part of section 31 and properly certified to the State in 1859 for the benefit of the road. (See case of John W. Carlin *v.* said company, decided as above.)

The foregoing decision touching the identical lands in question, as stated, has all the force and effect of *stare decisis*.

Consequently the adjustment of the grant in 1874 in ascertain-

ment of the right of the State under the act of July 14, 1870 (16 Stats., 277), declaring a partial forfeiture and the reapproval of the lists contain [containing] these particular lands as a part of said grant earned by the company, must be considered as a final adjustment and disposition of the subject-matter, which exhausted the power and jurisdiction of the department.

136–23 Your decision is therefore affirmed, and the papers submitted with your letter of April 6, 1880, are herewith returned.

Very respectfully,

(Sig.) S. J. KIRKWOOD, *Secretary.*

Filed July 26.

[SEAL.] (Sig.) ALECK BOARMAN, *Judge.*

STATE OF GEORGIA, }
Fulton County. }

Know all men by these presents that I, Lemuel P. Grant, do hereby appoint Henry R. Jackson my special attorney-in-fact, for me and in my stead, to sign for me, as one of a committee, a deed of conveyance of the Vicksburg, Shreveport and Texas railroad and property to the Vicksburg, Shreveport and Pacific Railroad Company, hereby ratifying whatever my said attorney may do in the premises.

Witness my hand and seal this first (1st) day of June, 1881.

(Sig.) LEMUEL P. GRANT. [SEAL.]

Witness:

(Sig.) P. D. MANN.

(Sig.) B. R. FREEMAN,
Commissioner for the State of Louisiana,
at Atlanta, Georgia.

[Commissioner's Seal.]

STATE OF GEORGIA, }
Chatham County. }

Know all men by these presents that I, Wm. M. Wadly, one of the committee of bondholders of the Vicksburg, Shreveport & Texas Railroad Company, do hereby constitute and appoint Henry R. Jackson my due [true] and lawful attorney, for me and in my name, place, and stead, as of said committee, to sell and convey, by deed for that purpose, the Vicksburg, Shreveport and Texas railroad, with all and singular its franchises and property, to the Vicksburg, Shreveport and Pacific Railroad Company, hereby authorizing the said Henry R. Jackson to sign my name as one of said committee to said deed, and hereby ratifying and confirming all that my said

attorney may do as to the price or consideration and terms of said sale, and all that my said attorney may lawfully do in the premises, as fully and completely as if myself were present and directing the same to be done.

In witness whereof I have hereunto set my hand and seal at Savannah, Georgia, this first day of June, A. D. 1881.

(Sig.) WM. M. WADLY. [SEAL.]

In presence of—
(Sig.) J. LAWTON WHATLEY.
" T. M. CUNNINGHAM.

136-24 STATE OF GEORGIA, *County of Chatham.*

Be it remembered that on this day came before me, Wm. B. Adams, a commissioner of deeds for the State of Louisiana within and for the State of Georgia, duly commissioned and acting as such, Wm. M. Wadley, to me known personally, and signed the foregoing instrument in my presence and that of the two witnesses whose names are thereunto subscribed as such, and the said Wm. M. Wadley acknowledged that he had executed the foregoing instrument for the purposes therein mentioned and set forth.

In witness whereof I have hereunto set my hand and affixed my official seal, at Savannah, in the county of Chatham and State of Georgia, this first day of June, anno Domini one thousand eight hundred and eighty-one (1881).

[SEAL.] (Sig.) WM. B. ADAMS,
A Commissioner for the State of Louisiana.

STATE OF NEW YORK, *City and County of New York,* } *ss:*

This act of sale, made and entered into this sixth day of June, 1881, by and between Henry R. Jackson, Lemuel P. Grant, William M. Wadley, Edward Hoopes, and H. B. Plant, parties of the first part, and Vicksburg, Shreveport and Pacific Railroad Company, a body corporate duly organized and chartered under the laws of the State of Louisiana, party of the second part, witnesseth:

Whereas the parties of the first part did, upon the first day of December, 1879, at a sale made by Francis A. Woolfley, special master, authorized thereunto by a decree of the circuit court of the United States for the district of Louisiana, rendered on the third day of July, 1879, in the case of Henry R. Jackson *vs.* The Vicksburg, Shreveport and Texas Railroad Company *et als.*, No. 5033, purchase the railroad of said company and all of its franchises and property, real and personal, more particularly described in this act hereafter;

And whereas the said parties did, on the second day of December, A. D. 1879, in pursuance of their rights under the laws of the State

of Louisiana, proceed to have themselves incorporated into a body politic, under the corporate name of the Vicksburg, Shreveport and Pacific Railroad Company, for the purpose of completing the railroad purchased by them and of operating the same;

And whereas it was the intention of said parties of the first part, by said articles of incorporation, to vest in said Vicksburg, Shreveport and Pacific Railroad Company the title to the railroad, property, franchises, and rights of every kind acquired by the purchase at aforesaid sale:

Now, therefore, this deed witnesseth: That for the purpose of giving full effect to said intent and ratifying and confirming the title of said Vicksburg, Shreveport and Pacific Railroad Company to said railroad, franchises, rights, and property, real and personal, 136–25 the parties of the first part do hereby bargain, grant, sell, and convey unto the party of the second part, Vicksburg, Shreveport and Pacific Company, all and singular the property, real and personal, and the franchises and rights acquired by and vested in them by deed from Francis A. Woolfley, special master, to them, dated December 20th, A. D. 1879, and recorded in Ouachita parish, Louisiana, the domicile of said Vicksburg, Shreveport and Pacific Railroad Company, more particularly described as follows, to wit: The railroad of said company, commencing on the Mississippi river opposite to Vicksburg and extending to the Texas line, by way of Monroe and Shreveport, with all of the rights, privileges, franchises, and immunities granted to the said company in any acts of the General Assembly, and all of the additions, ameliorations, improvements, constructions, and works thereon made by any of the defendants in said case during their occupation of the same, with the rights of way, depots, depot grounds, water stations, buildings, locomotives, engines, machinery, fixtures, and whatever else is in use on said railroad or attached thereto or that appertains to the same, without reservation or exception, and all of the lands donated by the State of Louisiana in the acts of the General Assembly in 1856 and 1857:

To have and to hold the said property free from all liens, claims, or charges of the grantors.

The consideration of the above deed is declared to be the sum of eight hundred and one thousand nine hundred and fifty-one dollars in cash paid *paid* the parties of the first part, the receipt whereof is hereby acknowledged, and the assumption and payment by said parties of the second part of a prior encumbrance on said property of the North Louisiana and Texas Railroad Company for the sum of five hundred & ninety-four thousand six hundred and six $\frac{8}{100}$ dollars, with interest, at the rate of five per cent. per annum, from the thirteenth day of April, A. D. 1875, and of all other liens and charges upon said railroad property.

And the said Vicksburg, Shreveport and Pacific Railroad Company accepts this deed for the purposes and uses therein mentioned.

In witness whereof the said Henry R. Jackson, Lemuel P. Grant,

Wm. M. Wadley, Edward Hoopes, and H. B. Plant have hereunto set their hands and the Vicksburg, Shreveport and Pacific Railroad Company has caused its common seal and the signature of its president to be hereto affixed this sixth day of June, A. D. one thousand eight hundred and eighty-one.

(Sig.) HENRY R. JACKSON. [L. S.]
" WM. M. WADLEY, [L. S.]
By HENRY R. JACKSON, *Att'y.*
" EDWARD HOOPES. [L. S.]
" LEMUEL P. GRANT, [L. S.]
By HENRY R. JACKSON, *Att'y.*
" H. B. PLANT.
" E. RICHARDSON, *Pres't.*

[Seal V., S. & P. R. R. Co.]

136-26 Done in the presence of—

(Sig.) GEO. C. WADDELL.
" DAVENPORT JACKSON.
" W. B. PITTMAN.

Witnessing signature of E. Richardson, pres'd't, & affixing seal of company:

(Sig.) W. B. PITTMAN.
" GEO. C. WADDELL.

STATE OF NEW YORK, }
City and County of New York. }

Be it remembered that on this 8th day of June, A. D. 1881, before me, Charles Nettleton, a commissioner for the State of Louisiana for taking the acknowledgement and proof of deeds, etc., personally appeared George C. Waddel, who, being by me duly sworn according to law, on his oath said that he saw Henry R. Jackson, Edward Hoopes, and H. B. Plant, grantors in the above deed, sign, seal, and deliver the same as their act and deed, and at the same time that he saw Henry R. Jackson, as attorney for William M. Wadley and Lemuel P. Grant, two other grantors in the same deed, affix and sign the names of the said Wm. M. Wadley and Lemuel P. Grant, by virtue and under authority of two powers of attorney from said Grant and Wadly to him then and there exhibited and now presented and attached to the said deed, and that he, the said George C. Waddell, subscribed his name to the same at the same time, as an attesting witness, and at the same time W. B. Pittman and Davenport Jackson, the other attesting witnesses, subscribed their names thereto.

(Sig.) GEO. C. WADDELL.

Subscribed in my presence and sworn to before me this 8th day of June, A. D. 1881.

(Sig.) CHAS. NETTLETON,
Commissioner for Louisiana in New York.

[Commissioner's Seal.]

I hereby certify that the above and foregoing is a true and correct copy of the original as recorded in my office in Notarial Book "Y," pages 278, 279, 280, 281, and 282.

In testimony whereof I have hereunto signed my name and affixed my seal of office this second day of September, A. D. 1881.

(Sig.) H. MOISE,
Deputy Clerk D. C.

STATE OF LOUISIANA, }
Parish of Caddo. }

I hereby certify that the above and foregoing are true and correct copies of the original acts, powers of attorney to Henry R. Jackson from Lemuel P. Grant and Wm. M. Wadley and deed of sale to the Vicksburg, Shreveport and Pacific Railroad Company from
136–27 Henry R. Jackson, Lemuel P. Grant, William M. Wadley, Edward Hoopes, and H. B. Plant, as the same appears of file and record in the clerk and *ex officio* recorder's office in and for the parish of Caddo.

Given under my hand and official seal this the 13th day of July, A. D. 1886.

(Sig.) W. G. BONEY,
D'y Clerk & ex Off. D'y Recorder.

Endorsed: Deed. Henry R. Jackson, Lemuel P. Grant, William M. Wadley, Edward Hoopes, and H. B. Plant to V., S. & P. R. R. Co. Deed filed and recorded Sept. 9th, 1881. Sig. F. A. Leonard, d'y clerk & *ex officio* deputy recorder. Copy. Filed July 26th, 1886. Sig. Aleck Boarman, judge.

Petition.

To the hon. the judge of the 18th judicial district of the State of Louisiana in and for the parish of Caddo:

The petition of John Brown, of the county of Shelby, State of Kentucky, with respect represents that he has been duly appointed and qualified as guardian of Wm. L. Smith, Elizabeth Ann Smith, Nancy B. Smith, Robert N. Smith, Jno. S. Smith, Mary M. Smith, and Martha L. Smith, minor heirs of John K. Smith, dec'd, late of the county of Shelby, State aforesaid, as appears by letters of guardianship, duly authenticated and annexed as part of this petition.

Petitioner further represents that the said minor heirs own a considerable amount of property in the parish of Caddo, which they

inherited from their deceased father, the said Jno. K. Smith, deceased, and that they are heirs-at-law of the late Wm. W. Smith, dec'd, whose succession is opened in Caddo parish, and as such entitled to one-half of the succession of the said W. W. Smith by virtue of representation from their father, the said Jno. K. Smith, dec'd, who was a brother of the said Wm. W. Smith, dec'd, the said Wm. W. Smith having no ascendants or descendants and no collateral heirs except your petitioner's wards and James Smith, of the county of Shelby, who is a brother of the said W. W. Smith, dec'd.

Petitioner represents that it is important that he be recognized as tutor or guardian aforesaid to take possession of said property and represent said minors.

Petitioner represents that no one residing in this parish is willing to take upon himself the tutorship and comply with existing laws by giving the required security, and no relative within the fourth degree that can be required to take the tutorship.

That in consideration of the premises petitioner is desirous of being recognized as tutor, having been appointed guardian in conformity with the laws of Kentucky, where the heirs reside, and of taking possession of the property and removing the property to the State of Kentucky after legal delays and notices. He represents that it would be to the interest of said minors to sell the

136-28 property inherited from their father, as most of it is unproductive and subject to heavy taxes. He represents that a family meeting of the relatives and friends of said minors should be convoked to give their advice with regard to the disposition of said property and the administration of the same, and that an under tutor should be appointed. He represents that the said minors have only two relatives domiciliated in the parish, viz., Jno. W. Smith and Joseph Smith; that the family meeting will be composed principally of friends.

The premises considered, petitioner prays that he be recognized as guardian aforesaid; that a family meeting of the friends and relatives of said minors be convoked to give their advice touching the administration of the property of said minors and whether he shall accept the succession of W. W. Smith, dec'd, with the benefit of security; whether the property inherited from their father should be sold and on what terms; also what disposition shall be made of their portion of the succession of W. W. Smith, dec'd, and to advise and recommend, if they see proper, some other suitable person for tutor, and prays that an under tutor be appointed, and for all orders and decrees necessary and for general relief.

Petitioner represents that the aforesaid James Smith, co-heir of petitioners herein, is present, and prays that he have notice of this application, and prays for an inventory and appraisement.

(Sig.) CRAIN & NUTT, *Att'ys.*

THE STATE OF LOUISIANA,
Parish of Caddo.

In this case, by reason of the law and the evidence, it is ordered, adjudged, and decreed that a family meeting of the relatives and friends of the minor heirs of Jno. K. Smith, dec'd, be convoked for the purpose of advising whether the property of the said minors situated in Caddo parish should be administered by their guardian, Jno. Brown, appointed in conformity with the laws of Kentucky, where said minors reside, by virtue of said appointment, or whether a tutor should be appointed and required to comply with the laws — this State by giving the required security—and, if so, to recommend a suitable person—and what disposition should be made of the property belonging to said minors inherited from their deceased father, and, if they think it advisable to sell the same, on what terms it ought to be sold, and whether the guardian or tutor should be permitted to accept the succession of W. W. Smith, deceased, for the benefit of said minors; and, further, what disposition shall be made of the portion of said succession accruing to said minors, and that commission issue to some duly qualified notary public in and for Caddo parish to hold the family meeting.

It is ordered that said family meeting be composed of Jno. W. Smith and Joseph Smith, relatives of the minors, and the following friends, viz: N. S. McClure.

It is further ordered that T. C. Lewis be appointed under 136–29 tutor upon his taking the oath required by law, and that commission issue to take an inventory and appraisement, as prayed for.

(Sig.) D. CRESWELL,
Judge 18th Dist.

I accept service of the foregoing petition, waive citation and time and admit the allegations of the petition.

(Sig.) JAMES F. SMITH.

Endorsed: No. 720. In the matter of the tutorship of the heirs of J. K. Smith. Petition and order for family meeting. Filed Nov. 30th, 1858. A. H. Leonard, dep. clerk.

Commission for Family Meeting.

STATE OF LOUISIANA,
Parish of Caddo.

In District Court.

To Chas. H. Pitts, recorder & *ex officio* notary public in and for the parish of Caddo, Greeting:

You are hereby commanded, in the name of the State of Louisiana and our said court, to convoke, at such time and place as you may

think fit, a meeting of the friends and relatives of the minor heirs of J. K. Smith, deceased, late of the county of Shelby, State of Kentucky, to deliberate and advise whether the property of the said minors situated in the parish of Caddo, State of Louisiana, shall be administered by the guardian, John Brown, appointed in conformity with the laws of the State of Kentucky, by virtue of said appraisement, whether a tutor for said minors shall be appointed and required to comply with the laws of this State by giving the required bond, and, if so, to recommend a suitable person, and advise what disposition shall be made of the property belonging to said minors inherited from their father. If they think it advisable to sell the same, upon what terms; and, further, whether the guardian or tutor shall accept the succession of W. W. Smith, deceased, for the benefit of such minors; and, further, what disposition shall be made of that portion of the succession accruing to said minors. It is further ordered that said family meeting be composed of John W. Smith, Joseph B. Smith, N. S. McClure, B. M. Johnson, and B. Logan, and a process verbal of same you will make to our said court, according to law.

Given under my hand and seal of office this 30th Nov'r, 1858.

(Sig.) THOS. H. CORBETT,
Dep. Clerk.

Procès-Verbal of Family Meeting.

THE STATE OF LOUISIANA, }
Parish of Caddo. }

We and each of us, appointed members of a family meeting to deliberate and advise on the interest of the minor heirs of John K. Smith, deceased, do solemnly swear that in thus acting we will act fairly and impartially and to the best of our ability, so help us God.

136–30

(Sig.) B. M. JOHNSON.
" B. LOGAN.
" N. S. McCLURE.
" JOS. B. SMITH.
" J. W. SMITH.

Sworn to and subscribed before me this 30th day of November, A. D. 1858.

(Sig.) THOS. H. PITTS, *Recorder.*

THE STATE OF LOUISIANA, }
Parish of Caddo. }

By virtue of the annexed commission, issued out of the honorable the district court of the parish of Caddo and to me, the undersigned, recorder & *ex officio* notary public, directed, I caused to appear at my

office, in the town of Shreveport, John W. Smith, Joseph B. Smith, Norment S. McClure, B. M. Johnson, and B. Logan, who, after having been duly sworn to advise and deliberate upon the affairs of the minor children of John K. Smith, deceased, late of the county of Shelby, State of Kentucky; and, further, whether or not the property of said minors in the parish of Caddo, State of Louisiana, shall be administered by their guardian, John Brown, appointed in conformity with — laws of the State of Kentucky, by virtue of said appointment; whether a tutor for said minors shall be appointed and required to comply with the laws of this State by giving the required bond, and, if so, to recommend a suitable person; and also to advise what disposition shall be made of the property belonging to said minors inherited from their father, if they think it advisable to sell the same, and upon what terms; and, further, whether the guardian or tutor shall accept the succession of W. W. Smith, deceased, for the benefit of said minors; and, further, what disposition shall be made of the succession accruing to said minors, who, after having taken and subscribed the annexed oath, did deliberate and advise as follows, to wit:

That John Brown, the guardian of the minor heirs of John K. Smith, deceased, administer the property of said minors in the parish of Caddo, on his giving bond and taking the oath required by law, for the following reason, to wit: Some doubt might arise as to the right of said guardian administering said property under the acts of 1843. They further advise that the property inherited from their father be sold, one-fourth cash and the balance of the purchase-money payable in one, two, and three years from date of sale, bearing eight per cent. interest from date, purchaser or purchasers to give their notes, dated and due as above, with approved personal security, with special mortgage, waiving benefit of appraisement, retained on the property, for the reason that the property, most of it, is unimproved, not productive, and subject to high tax
136–31 That portion of it which is improved consists of frame buildings which are rapidly going to decay. They think it advisable for the guardian for said minors to accept the succession of W. W. Smith for the benefit of the minors, with the benefit of the inventory. They further advise that all the unproductive property inherited from the succession of W. W. Smith by said minors which they may receive by partition hereafter to be made be sold on the same terms as that inherited from their father, J. K. Smith, deceased, and if the spring place, cistern, and appurtenances should fall to said minors by said partition — be sold for one-fifth cash and the balance on a credit of one, two, three, and four years, purchasers to give notes, with approved personal security, bearing 8 % interest from date, and special mortgage, waiving the benefit of appraisement, and that any other property that may fall to them, except the property on the levee, be sold on the same terms as that inherited from their father, J. K. Smith. They think it to the interest of the minors to keep the property on the levee inherited from the succession of

W. W. Smith, deceased. They do not think it advisable for the tutor of said minors to take charge of any of the property belonging to the succession of W. W. Smith, deceased, which is administered by John W. Smith, until *until* a sufficient property has been sold or disposed of to pay the debts and liabilities of same.

Thus done and signed by the members of said family meeting and Thos. C. Lewis, under tutor for said minors, in the presence of Albert H. Leonard and Independence Crain, witnesses of lawful age and domicil, who sign with the parties and me, the said notary, on this 30th day of November, A. D. 1858.

Attest:	(Sig.)	B. M. JOHNSON.
	"	B. LOGAN.
	"	N. S. McCLURE.
	"	JOS. B. SMITH.
	"	J. W. SMITH.
	"	A. H. LEONARD.
	"	PENN CRAIN.

I approve the above proceedings.

(Sig.) T. C. LEWIS,
Under Tutor.

(Sig.) THOS. H. PITTS,
Recorder & ex Officio Not. Public.

Petition for Homologation.

To the hon. the judge of the 18th judicial district of the State of Louisiana in and for Caddo parish:

The petition of John Brown with respect represents, in the matter of the tutorship of the minor heirs of Jno. K. Smith, dec'd, that he caused a family meeting of the relatives and friends of said minors to be convoked on the 30th day of November, 1858, and
136–32 that the process verbal of their deliberation has been returned and filed, to which reference is hereby made. He alleges that the proceedings were regular, and that he is desirous of having the same homologated.

Wherefore he prays for judgment of homologation; that he be permitted to qualify as tutor and have the property sold, as advised by said meeting; for a commission to take an inventory and appraisement; that his bond be fixed, and for all orders and decrees necessary and for general relief; for citation to the under tutor and att'y of absent heirs of W. W. Smith, dec'd.

(Sig.) CRAIN & NUTT.

Judgment Homologating.

THE STATE OF LOUISIANA, }
Parish of Caddo. }

By reason of the law and the evidence and the foregoing application it is ordered, adjudged, and decreed that the proceedings of the family meeting of the minor heirs of Jno. K. Smith, dec'd, had on the 30th day of November, 1858, before Thos. H. Pitts, recorder & *ex officio* notary public, be homologated and made the judgment of the court; that Jno. Brown be appointed the tutor of said minor heirs and recognized as tutor and have letters of tutorship on his giving bond, which is hereby fixed at sixty thousand dollars, and on his taking the oath required by law; and that the property belonging to said minors be sold and administered as advised by said family meeting; and that an inventory and appraisement of the property, rights, and credits of said minors be made, and it is ordered that R. White and S. Van Bibber be appointed appraisers.

Done and signed in open court this 1st day of December, 1858.

(Sig.) D. CRESWELL,
Judge 18th Dist.

I accept service of the foregoing petition and consent to the homologation prayed for.

(Sig.) T. C. LEWIS.

Endorsed: No. 720. In the matter of the tutorship of the heirs of J. K. Smith. Petition and judgment homologating proceedings of family meeting. Filed Dec'r 1st, 1858. (Sig.) N. E. Wright, clerk.

Oath of Tutor.

STATE OF LOUISIANA, }
Parish of Caddo. }

I, John Brown, do solemnly swear that I will faithfully and impartially discharge and perform all the duties and trusts incumbent on me by law as tutor to the minor heirs of J. K. Smith, deceased, to the best of my ability and understanding, so help me God.

(Sig.) JOHN BROWN.

136–33 Sworn to and subscribed before me this 1st day of Dec'r, 1858.

(Sig.) N. E. WRIGHT, *Clerk.*

Endorsed: No. 720. In the matters of the tutorship of the heirs of J. K. Smith. Oath of tutor. Filed Dec'r 1st, 1858. (Sig.) N. E. Wright, clerk.

Oath of Under Tutor.

THE STATE OF LOUISIANA, }
Parish of Caddo. }

I, T. C. Lewis, do solemnly swear that I will faithfully and impartially discharge all the duties incumbent on me by law as under tutor of the minor heirs of Jno. K. Smith, dec'd, to the best of my abilities, so help me God.

(Sig.) T. C. LEWIS.

Sworn to and subscribed before me this November 30th, 1858.

(Sig.) A. H. LEONARD, *Dep. Clerk.*

Endorsed: No. 720. In the matter of the tutorship of the heirs of J. K. Smith. Oath of under tutor. Filed Nov. 30th, 1858. (Sig.) A. H. Leonard, dep. clerk.

Bond of Tutor.

STATE OF LOUISIANA, }
Parish of Caddo. }

Know all men by these presents that we, John Brown, as principal, and John W. Smith, J. B. Smith, and L. M. Nutt, as securities, are held and firmly bound unto N. E. Wright, clerk of the district court in and for the parish and State aforesaid, or his successor or successors in office, for the use and benefit of the heirs and legal representatives of John K. Smith, deceased, in the sum of sixty thousand dollars; for the payment whereof we bind ourselves, our heirs, executors, and administrators, firmly by these presents.

Dated at Shreveport this 1st day of Dec'r, A. D. 1858.

Whereas the above-bound John Brown has been appointed tutor to the minor heirs of J. K. Smith, deceased: Therefore the condition of this obligation is such that if the said John Brown shall well and faithfully discharge and perform all the duties of tutor as aforesaid, according to law, then the above obligation to be null and void; otherwise to remain in full force and virtue.

(Sig.) JOHN BROWN.
" JOHN W. SMITH.
" JOS. B. SMITH.
" L. M. NUTT.

Endorsed: No. 720. In the matter of the tutorship of the heirs of J. K. Smith. Bond. Filed Dec'r 1st, 1858. (Sig.) N. E. Wright, clerk.

136–34 *Letters to Tutor.*

STATE OF LOUISIANA, }
Parish of Caddo. }

In Tenth Judicial District Court.

Whereas John Brown has this day been appointed tutor of the minors of J. K. Smith, deceased, and having given bond and security and taken the oath as prescribed — the law, now, therefore, he is hereby authorized and fully empowered to discharge and perform all and singular the duties appertaining to the said appointment, according to law.

In testimony whereof I have hereunto signed my name and affixed my seal of office on this twenty-fourth day of January, A. D. 1866.

(Sig.) A. L. MERSHAM, *Clerk.*

Endorsed: No. 720. Tutorship of minors of J. K. Smith. Letters to tutor. Filed 24th Jan'y, 1866. (Sig.) A. L. Mersham, clerk.

Clerk's C-ificate.

STATE OF LOUISIANA, }
Parish of Caddo. }

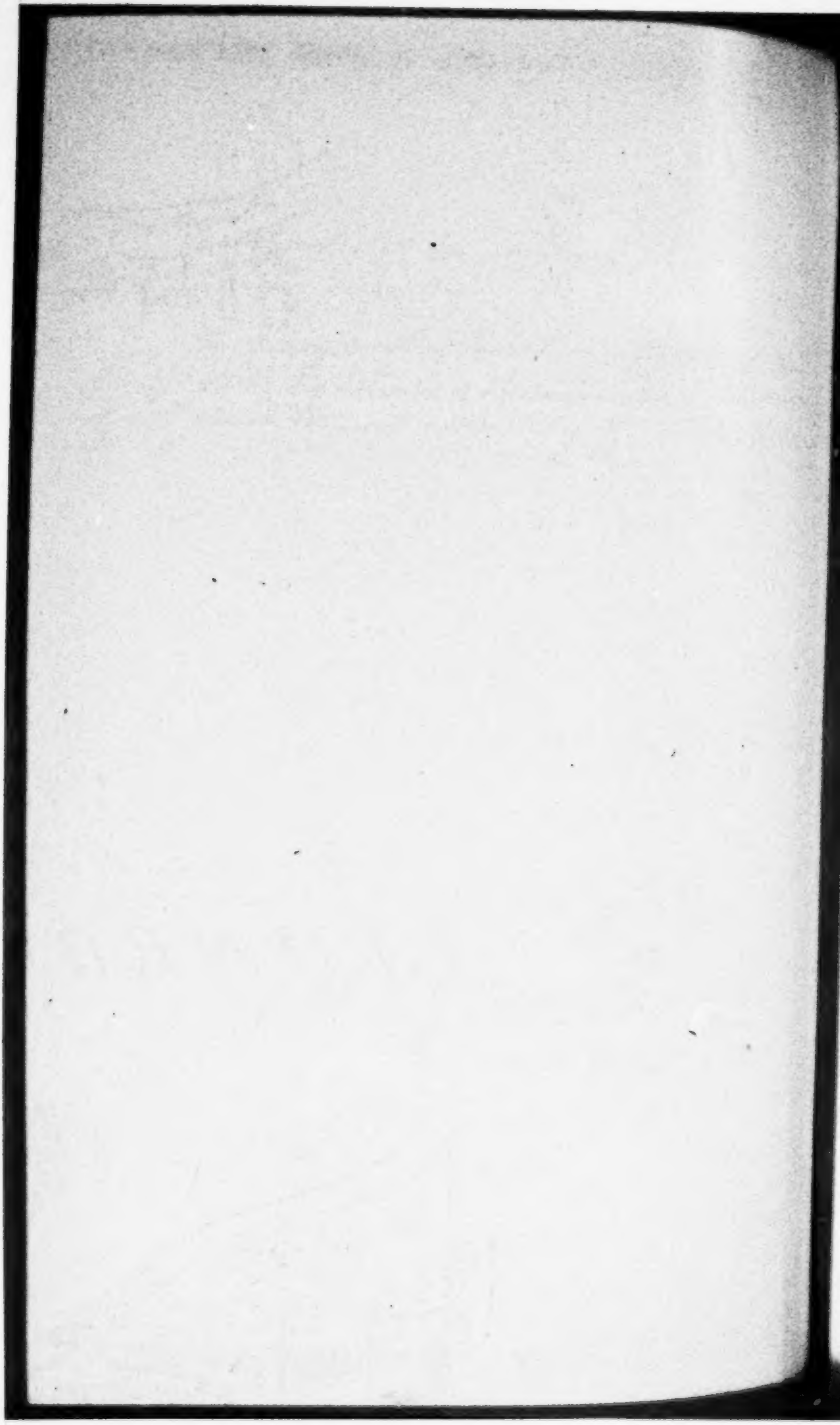
I, W. P. Ford, clerk of the 1st judicial district court of the State of Louisiana, held in and for the parish of Caddo, do hereby certify that the foregoing sixteen and a half (16½) pages contain a true, full, and correct transcript of the petition and order for a family meeting, the commission for and *procès-verbal* of, and the petition for and the judgment homologating the proceedings of said family meeting and appointing tutor, oaths of tutor and under tutor, bond of and letters testamentary to tutor in the matter of the tutorship of the minors of John K. Smith, dec'd, No. 720 on the docket of said district court, as the same now appear- on file and of record in my office.

Given under my hand and official seal, at Shreveport, La., on this 22nd day of July, A. D. 1886.

[SEAL.] (Sig.) W. P. FORD,
Clerk 1st Dist. Court of La.

(Endorsed:) No. 720. Tutorship of minors of John K. Smith. Copy. Filed July 26, '86. (Sig.) Aleck Boarman, judge.

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED



E. (4–207.) N. O. C. J. E.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *June* 22, 1886.

I, Wm. A. J. Sparks, Commissioner of the General Land Office, do hereby certify that the annexed photographic copies of plats of surveys in townships 18 north, ranges 13 and 14 west, 136–35 northwestern district, Louisiana, approved by the surveyor general of Louisiana February 13, 1839; March 19, 1839; February 4, 1852; September 4, 1856, and October 10, 1857, are true and literal exemplifications of the official plats of said surveys on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of [SEAL.] Washington, on the day and year above written.

(Sig.) WM. A. J. SPARKS,
Commissioner of General Land Office.

(13151–1000.)

(Here follow three plates, marked pp. 80*b*, 80*c*, and 80*d*.)

Pl'ff's' Summons.

THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Judicial Circuit, Holding Sessions in and for the Western District of Louisiana.

The President of (eagle here) the United States to the marshal of the district to execute & return.

To Henderson Markham, A. D. Battle, W. B. Wisenor, Jas. M. Wilson, W. R. Devoe, Geo. Turner:

You are hereby commanded to be and appear before a circuit court of the United States in and for the fifth circuit and district of Louisiana, to be holden at the city of Shreveport on the 28th day of July, 1886, at — o'clock a. m., then and there to testify the truth, according to your knowledge, in the matter of R. N. Smith *et al. vs.* Geo. A. Turner; and herein fail not under penalty of two hundred and fifty dollars.

Seal U. S. Circuit Court, Western Dist. of La.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of Shreveport, this 27th day of July, in the year of our Lord 1886, and of the Independence of the United States of America the 111th.

E. J. NOLAN, *D'y Clerk.*

Marshal's Return.

Received in office July 27th, 1886, and on the same day, month, and year I served a certified copy of the within by leaving same in the hands of Henderson Markham and A. D. Battle. On W. R. Devoe I made service by leaving a copy of the — with his wife at his domicile. After diligent search I failed to find W. B. Wisenor, and learned that he is sick at Rocky Point and unable to attend court.

(Sig.) GEO. G. WEAKS, *D'y Mar.*

136–36 On Geo. Turner I made personal service by leaving same in his hands. On J. M. Wilson I made service.

(Sig.) J. S. KERLEY, *Dep'ty.*

Filed July 28th, '86.

E. J. NOLAN, *D'y Clerk.*

Extract of Minutes of U. S. Circuit Court.

WEDNESDAY, *July 28th*, 1886.

Court met pursuant to adjournment, his honor Aleck Boarman, district judge, presiding.

R. N. SMITH ET AL. vs. GEO. A. TURNER. } No. 80.

Case continued until to-morrow, Thursday, July 29th, 1886.

Ordered, that the court do now adjourn until to-morrow morning, Thursday, July 29th, 1886.

THURSDAY, *July 29th*, 1886.

Court met pursuant to adjournment, his honor Aleck Boarman, district judge, presiding.

R. N. SMITH ET AL. vs. GEO. A. TURNER. } No. 80.

Answer of the Vicksburg, Shreveport and Pacific railroad filed. Motion on part of the Vicksburg, Shreveport and Pacific railroad for continuance filed. Motion overruled. Motion for continuance.

R. N. SMITH ET AL. vs. GEO. A. TURNER. } No. 80.

Motion for continuance filed on part of defendant, Vicksburg, Shreveport & Pacific railroad. Motion overruled.

This case — on to be heard as per assignment. Both parties announced themselves ready for trial; whereupon came the following jury, to wit, Jas. Heffner, C. E. Sandford, H. Hunsicker, B. A. Holmes, A. Bercher, W. H. Busbey, Gid. Owens, Paul De Bergue, L. Gustine, S. Herold, H. Vestal, M. Cohen, twelve good and lawful men of the district, here in open court duly empaneled and sworn to well and truly try the case wherein R. N. Smith and others are plaintiffs and Geo. A. Turner and others are defendants, and true verdict render according to the evidence. The jury being completed, the court appointed S. Herold as foreman thereof. The case was then proceeded with, and after hearing the evidence in part the case was continued until to-morrow morning, Friday, July 30th, 1886, at 9 a. m.

136–37 Ordered by the court, that an attachment issue for W. R. Devoe, witness, for non-attendance.

Ordered, that the court do now adjourn until to-morrow morning, Friday, July 30th, 1886, at 9 a. m.

Documents Filed in Evidence.

E. In L. 37648. (4–207.) J. H. B. J. E.

DEPARTMENT OF THE INTERIOR, W. O. C.
GENERAL LAND OFFICE,
WASHINGTON, D. C., *June* 25, 1886.

I, Wm. A. J. Sparks, Commissioner of the General Land Office, do hereby certify that the annexed extracts from the field notes of the survey of townships 18 north, ranges 13 and 14 west, district north of Red River, Louisiana, are true and literal exemplifications of so much of the official field-notes of the survey of said townships on file in this office as said extracts purport to represent.

In testimony whereof I have hereunto subscribed my [SEAL.] name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

(Sig.) WM. A. J. SPARKS,
Commissioner of General Land Office.

(14502–1,500.)

Field-Notes of Township 18 *N., R.* 13 *&* 14 *West, Southwestern District of Louisiana.*

Variation of the needle, 8° 45′ east.

Commenced at a post corner to townships 17, R. 13 W.; 17, R. 14 W.; 18, R. 13 W., & 18, R. 14 west, and ran north on the east boundary of township 18, range 14 W., southwestern district Louisiana.

1st mile north.

27.00 Leave creek, runs to the left.
29.00 Small creek runs right.
40.00 Set ¼-section post at the head of an arm of Silver Lake, bears N. E.; willow 18 in. dia., S. 28 W. 16 lks.; willow 12 in. dia., N. 19 E. 11 lks.
52.00 To a prong of Silver Lake Co., N. W.; post oak 12 in. dia., S. 25 W. 17 lks.; elm 12 in. dia., S. 89 E. 32 lks.; N. 32 W. 18 lks.
63.00 Leave the lake; set post; S. gum 12 in. dia., N. 40 E. 14 lks.; S. gum 20 in. dia., N. 32 W. 18 lks.

80.00 Set 1st mile post in the town of Shreveport, whence a post oak 20 in. dia., S. 69 E. 98 lks.; hickory 18 in. dia., N. 80 E. 94 links; post oak 19 in. dia., N. 59 W. 65 lks.; post oak 18 in. dia., S. 57 W. 78 links.
2nd-rate rolling land. Timber, oak, hick., pine & gum.

136–38 2nd mile north.

11.00 To a bend of Red River N. E.; willow 24 in. dia., S. 51 E. 26 links; ash 18 in. dia., N. 84 W. 30 lks.
15.00 Leave the river, bears N. E.; set post, whence a willow 20 in. dia. *dia.* bears N. 50 E. 11 lks.
28.00 To Cross bayou; set post; ash 18 dia., S. 67 8 lks.; ash 12 dia., S. 77 W. 15 lks.
35.00 Leave the Cross bayou; set post; cotton-wood 18 in. dia., N. 55 E. 24 lks.; ash 18 in. dia., N. 31 W. 28 links.
40.00 Set ¼-section post, whence an ash 10 in. dia., S. 62 E. 23; ash 10 in. dia., S. 9 W. 17 lks.
80.00 Set 2nd mile post, whence a willow 12 in. dia., N. 81 E. 11 lks.; willow 12 in. dia., S. 33 W. 21 lks.; willow 12 in. dia., S. 37 E. 10 links.
Deep overflow—from 10 to 15 feet. Timber, oak, hickory, ash, gum, &c.

3rd mile north.

18.50 To Red River, leaves N. W. & S. E.; willow 8 in. dia., S. 64 E. 15 lks.; willow 18 in. dia., S. 12 W. 20 links.

* * * * * * *

Field-Notes of Township 18, *R.* 13 *W.*

* * * * * * *

Commenced at S. W. angle of said township and ran east 1st mile.

20.00 Improvement to the left.
40.00 Set ¼-section post, whence a black oak 12 in. dia., S. 50 W. 28 lks.
44.50 Field, & leave it at 49.50 chs.
75.00 Field.
80.00 Set 1st mile post, whence hickory 12 in. dia., S. 51 E. 40 lks.; black oak 12 in. dia., N. 38 E. 51 lks.; black oak 8 in. dia., N. 68 W. 26 lks.; black oak 8 in. dia., S. 45 W. 52 lks.
2nd-rate rolling land.

2nd mile post east.

9.50 Leave the field.
40.00 Set ¼-sec. post, whence a hickory 8 in. dia., N. 13 W. 43; hickory 20 in. dia., S. 2° W. 47 lks.

48.00 To cut off Red River, S. E.; black oak 18 in. dia., N. 60 W. 4 lks.; black oak 18 in. dia., S. 25 E. 25 lks.
Rolling land, &c.

* * * * * * *

136–39 *Field-Notes of Township* 18, *R.* 13 *W., Southwestern District Louisiana.*

* * * * * * *

Commenced at the 1st mile post on the south boundary of T. 18, R. 13 W., and ran north between sections 31 & 32.

13.01 Leave the field.

24.00 Head of lagoon, N. W.

36.00 To Silver Lake; set post, whence a white oak 20 in. dia., N. 60 E. 27; white oak 20 in. dia., S. 43 W. 20 lks.

45.50 Leave the lake; cypress 20 in. dia., S. 68 W. 9 lks.; willow 18 in. dia., N. 55 E. 22 links.

47.00 To Red River; set post, whence a cotton-wood 30 in. dia., S. 20 E. 42 lks.; sycamore 12 in. dia., S. 79 W. 52 lks.
Rolling land, 2nd rate.

East between sections 30 & 31.

8.37 To Red River, bears S. east; set post, whence an elm 18 in. dia., N. 19 W. 33 lks.; cotton-wood 40 in. dia., S. 10 W. 54.

East between secs. 19 & 30.

8.50 To Red River; set post, willow 18 in. dia., S. 20 E. 10 lks.; willow 18 in. dia., west 10 lks.

* * * * * * *

Traverse of Silver Lake in front of sec. 31.

Commenced at a post at range line, corner to secs. 31 & 36, S. 30 E. 10.00; S. 60 E. 8.00; N. 30 E. 6.00; S. 20 E. 6.00; S. 64 E. 6.00; N. 35 E. 8.00; N. 35 W. 11.00; N. 45 E. 5.00; N. 87 E. 15.84; S. 75 E. 14.00; S. 56¼ E. 32.10, to post on line between secs. 31 & 32.

In front of section 32.

S. 50 E. 6.00 chs.; south 3.50 to high bluff; at 300 drain at the lower point of Silver Lake; S. 65 W. to corner of 31 & 32, on southern margin of Silver Lake.

In front of sec. 31.

S. 65 W. 8.00; at 3.00 lagoon, 4.00 wide; N. 84 W. 10.00; S. 45 W. 15.00; at 13.00 lagoon, 2.00 wide; N. 20 W. 10.00; N. 55 W. 10.00; S. 47 W. 14.00; S. 57 W. 10.00; N. 27 W.

8.00; N. 59½ W.; at 8.00 prong of lake, 10.00 wide; bears
21.25 S. W. at — to traverse post on range corner to secs. 31 & 36.

JAS. P. TERRELL.

THOS. D. GATLIN &
E. SMITH,
Chainmen.

A. W. WARREN.

JOHN LEE,
RICHARD DODD,
Chainmen.

* * * * * * *

136-40 *Field-Notes of Township* 18 *N., R.* 13 *&* 14 *West.*

* * * * * * *

Traverse of Silver Lake in front of sec. 36.

Commenced at corner on range line N. 34 W. 10.00 N.
North 5.00.
S. 68 E. 6.00 to corner of 31 & 36 on range line.

* * * * * * *

Traverse of the right bank of Red River in front of sec. 30.

Commenced at a post near the mouth of Cross bayou, right bank & corner to sections 25 & 30, on the range line between ranges 13 & 14 W., T. 18 north, S. 35 E. 3.00 chs. to mouth of bayou; S. 9¼ W. 10.67 to corner of secs. 25 & 30, on range line; thence, with range line, 4.00 chs. to a post on said line and corner to 25 & 30; thence, in front of sec. 30, S. 37° 15′ E. 13.83 to line between sections 30 & 31.

In front of sec. 31.

S. 55 E. 8.00 chs.; S. 75 E. 38.00; 57¼ E. 33.80 to line between sections 31 & 32.

In front of sec. 32.

S. 58 E. 21.00 chs.; S. 53 E. 25.00; at drain south; at 10.00 chs. ascend high bluff; at 20.00 chs. descend to low bottom; S. 69 E. 9.00 to Sewell's cut-off; south 11.00 to bluff.
S. 15.30 E. 6.85 to the corner of secs. 5 & 32, on town. line.

Traverse of the right bank of Red River.

Commenced at a post near the mouth Cross bayou, left bank & corner to 25 & 30, on the range line, thence up the river.

In front of sec. 30.

S. 58 E. 4.00 chs. to mouth of Cross bayou; N. 12 E. 7.00; N. 2 E. 20.00; N. 8¼ E. 20.50 to traverse post on line between sections 19 & 30.

In front of section 19.

N. 15 W. 12.00 chs.; N. 32 W. 6.50; N. 54¼ W. 240 to post on range line, corner to secs. 19 & 24. Commenced at a post on range, corner to secs. 13 & 18, thence, in front of sec. 18, S. 80 E. 10.00 chs.; S. 56 E. 10 chs.; S. 34¾ E. 15.90 to line between secs. 18 & 19; at 15.00 bayou.

136–41 In front of section 19.

S. 21 E. 8.00chs.; S. 8 E. 14.00; at 12.00 bayou; south 25.00; S. 30 E. 10.00; S. 32 E. 2.50; east 25.00; N. 79 E. 13.00; N. 44 E. 3.50; N. 8 W. 5.00; N. 25 W. 5.50; N. 52 W. 10.00; N. 40 W. 20.00; N. 31 W. 13.00; N. 14¾ W. 8.20 to corner of 18 & 19.

* * * * * * *

Endorsed: Filed July 29, 1886. (Sig.) Aleck Boarman, judge.

F. F. B. J. D. S.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE, *March* 24, 1882.

I, N. C. McFarland, Commissioner of the General Land Office, do hereby certify that the annexed list of lands, *re*-approved for the North Louisiana and Texas, formerly the Vicksburg, Shreveport and Texas, railroad, is a true and literal exemplification of the list of lands within the six-mile limits re-approved for said railroad by the acting Secretary of the Interior January 10, 1874, and of the whole of said list.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of [SEAL.] Washington, on the day and year above written.

N. C. McFARLAND,
Commissioner of General Land Office.

"North Louisiana and Texas," formerly "Vicksburg, Shreveport and Texas, railroad."

List of lands in the district of lands subject to sale at Natchitoches, within the six-mile limits, granted to the State of Louisiana by the act of Congress approved the 3d of June, 1856, entitled "An act making a grant of lands to the State of Louisiana to aid in the construction of railroads in said State," being the vacant and unappropriated lands in the alternate sections, designated by odd numbers, for six sections in width on each side of the railroad, "from the Texas line, in the State of Louisiana, west of the town of Greenwood,

via Greenwood, Shreveport and Monroe, to a point on the Mississippi river opposite Vicksburg," and being that portion of the original list of lands on file, approved by the Secretary of the Interior on the 7th of October, 1859, situated opposite that part of said road which was completed within the limitation of ten years allowed by the granting act of 3d of June, 1856, and which therefore have not reverted to the Government:

136–42 (4–298.)

North of Base Line and West of Principal Meridian.

North Louisiana and Texas 6 mile-limits railroad list, Natchitoches district.

No.	Parts of section.	Section.	Township.	Range.	Acres.	Remarks.
	Lots 3 or S. E. S. W. ¼	31	17	13	21.16	
	Lots 1, 2, 3, 4, 5, 6, 7, 8, & 9	31	18	13	178.80	
	W. ½ N. E. ¼, W. ½ S. E. ¼, E. ½ S. W. ¼, N. W. ¼ S. W. ¼, & N. W. ¼	1	16	14	444.79	
	N. W. ¼ N. E. ¼ & N. E. ¼ N. W. ¼	19	"	"	79.15	
	N. E. ¼ N. E. ¼ & N. W. ¼ S. W. ¼	7	17	14	80.25	
	E. ½ N. E. ¼, E. ½ S. E. ¼, S. W. ¼ S. E. ¼ & S. ½ S. W. ¼	25	"	"	280.17	
	S. E. ¼	35	"	"	159.35	
	N. W. fr'l ¼	11	18	14	21.15	
	N. fr'l ½ sec.	15	"	"	40	
	All of	17	"	"	640	
	" "	19	"	"	627.52	
	N. W. fr'l ¼	21	"	"	148.67	
	E. fr'l ½ sec., E. fr'l N. W. ¼, E. fr'l ½ S. W. ¼	29	"	"	160.25	
	W. fr'l ½ S. W. ¼ & N. W. ¼ N. W. ¼, S. ½ N. W. ¼ & S. E. ¼ S. W. ¼	3	16	15	118.25	
	S. W. ¼ N. E. ¼ & N. ½ S. W. ¼ & N. W. ¼	21	"	"	279.44	
	N. E. ¼ of S. W. ¼	3	17	15	37.45	
	W. ½ S. E. ¼	7	"	"	80.04	
	N. W. ¼ N. E. ¼	11	"	"	39.99	
	N. ½ N. E. ¼	13	"	"	80.27	
	S. ½ S. E. ¼ & S. E. ¼ S. W. ¼	13	18	15	109.94	
	S. ½ sec.	21	"	"	167.82	
84½	E. ½ S. W. ¼ & S. ½ N. W. ¼	23	18	15	280.63	
	S. E. ¼ & W. fr'l ½	25	"	"	127.55	
	All of	27	"	"	51.12	
	S. E. ¼ & S. ½ S. W. ¼	31	"	"	176	
	E. ½ N. E. ¼, S. E. ¼ & E. ½ S. W. ¼	1	17	16	320.12	
	S. W. ¼ S. E. ¼ & S. E. ¼ S. W. ¼	9	"	"	80.05	
	N. E. ¼ S. E. ¼	21	18	16	39.80	
	S. E. ¼ N. E. ¼ & E. ½ N. W. ¼	23	"	"	119.87	
	N. ½ N. E. ¼ & S. ½ S. E. ¼	27	18	16	159.25	
	N. W. ¼	29	"	"	160	
	All of fr'l or east part	31	"	"	264.24	
	Total				5,583.09	

(Within the six-mile limits.)

GENERAL LAND OFFICE, *January* 8, 1874.

I, Willis Drummond, Commissioner of the General Land Office, do hereby certify that the foregoing, on pages one to two, inclusive, is a true and correct list of the tracts of land within the six-mile limits granted to the State of Louisiana by the act of Congress approved 3rd of June, 1856, entitled "An act making a grant of
136–43 lands to the State of Louisiana to aid in the construction of railroads in said State" within the district of lands subject to sale at Natchitoches, Louisiana, being the vacant, unappropriated, and unreverted lands in the alternate sections, designated by odd numbers, for six sections in width on each side of the railroad," from the Texas line, in the State of Louisiana, west of the town- of Greenwood, Shreveport, and Monroe, to a point on the Mississippi river opposite Vicksburg," and known as the "North Louisiana and Texas railroad," successors to the "Vicksburg, Shreveport and Texas railroad," within the State of Louisiana, and they are now submitted for the re-approval of the Secretary of the Interior in accordance with the requirements of said act of June 3d, 1856, and as authorized by the ac[illegible]g Secretary of the Interior's letter of Dec. 30th, 1873, subject to a[illegible]s conditions and to any valid interfering rights which may exist to any of the tracts embraced in the foregoing list.

In testimony whereof I have hereunto subscribed my name and caused the seal of the General Land Office to be affixed,
[L. S.] at the city of Washington, on the day and year first hereinabove written.

(Sig.) WILLIS DRUMMOND,
Commissioner.

DEPARTMENT OF THE INTERIOR,
WASHINGTON CITY, D. C., *January 10th*, 1874.

Approved, subject to the conditions and rights above mentioned.
(Sig.) B. R. COWEN,
Acting Secretary.

Endorsed: Filed July 29, 1886. (Sig.) Aleck Boarman, judge.

Summons.

THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Judicial Circuit, Holding Sessions in and for the Western District of Louisiana.

The President of [eagle here] the United States to the marshal of the district of Louisiana to execute and return.

To Thomas Philips, E. M. Smith, Ed. Jacobs, & Geo. A. Turner:

You are hereby commanded to be and appear before a circuit court of the United States in and for the fifth circuit and district of

Louisiana, to be holden at the city of Shreveport on the 29th day of July, 1886, at 9 o'clock a. m., then and there to testify the truth according to your knowledge in the matter of R. N. Smith *vs.* Geo. A. Turner; and herein fail not under penalty of two hundred and fifty dollars.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of Shreveport, this 29th day of July, in the year of our Lord 1886, and of the Independence of the United States the 111th.

[Seal U. S. Circuit Court for the Western Dist. of La.]

E. J. NOLAN, *D'y Clerk.*

136–44 *Marshal's Return.*

Received in office July 29th, '86, and on the same day, month, and year I made personal service on E. M. Smith and domicile service on Thomas Philips by handing a copy of within to his wife; also a domicile — on Ed. Jacobs by handing a copy of within to his wife; personal service on Geo. A. Turner.

(Sig.) GEO. G. WEAKS, *D'y Mar.*

Filed July 29th, 1886.

E. J. NOLAN, *D'y Clerk.*

Attachment for W. R. Devoe, Witness.

The President of the United States to the marshal of the district of Louisiana or his lawful deputy, Greeting:

You are hereby commanded to attach and hold in your custody the body of W. R. Devoe, so that he be and appear at a circuit court of the United States for the district of Louisiana, holden in the city of Shreveport on 29th day of July, 1886, and to show cause (if any he has or can) why he should not be fined according to law for non-attendance as witness in said court on this 29th day of July, 1886.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 29th day of July, A. D. 1886, and 111th year of the Independence of the United States.

E. J. NOLAN, *D'y Clerk.*

Marshal's Return.

Rec'd in office July 29th, 1886, and on the same day, month, and year I attached the body of the within & produced the same in open court.

(Sig.) JNO. S. KERLEY, *Dep'ty.*

Filed July 29th, '86.

E. J. NOLAN, *D'y Cl'k.*

Documents Filed in Evidence.

Certificate No. 1.

LOUISIANA LAND OFFICE,
BATON ROUGE, *May 14th*, 1853.

It is hereby certified that in pursuance of law Wm. W. Smith, of the parish of Caddo, in the State of Louisiana, on this day purchased of the register of this office the following-described land, to-wit: The shallow lake known as Silver Lake, in the parish of Caddo, in township No. 18, of range- No. thirteen & fourteen, being in the northwestern land district of Louisiana and containing one hundred and eighty-six & $\frac{57}{100}$ acres, at the rate of one $\frac{25}{100}$ dollars per acre, amounting to two hundred and thirty-three $\frac{21}{100}$ dollars, for which the said Wm. W. Smith has made payment in full as required by law.

136–45

(Signed) W. H. CRENSHAW, *Register.*

STATE LAND OFFICE,
BATON ROUGE, LA., *June* 18, 1856.

The above certificate is a true copy of the original on file in this office, by virtue of which patent No. 1383 was issued February 24th, 1855, as per record of this office.

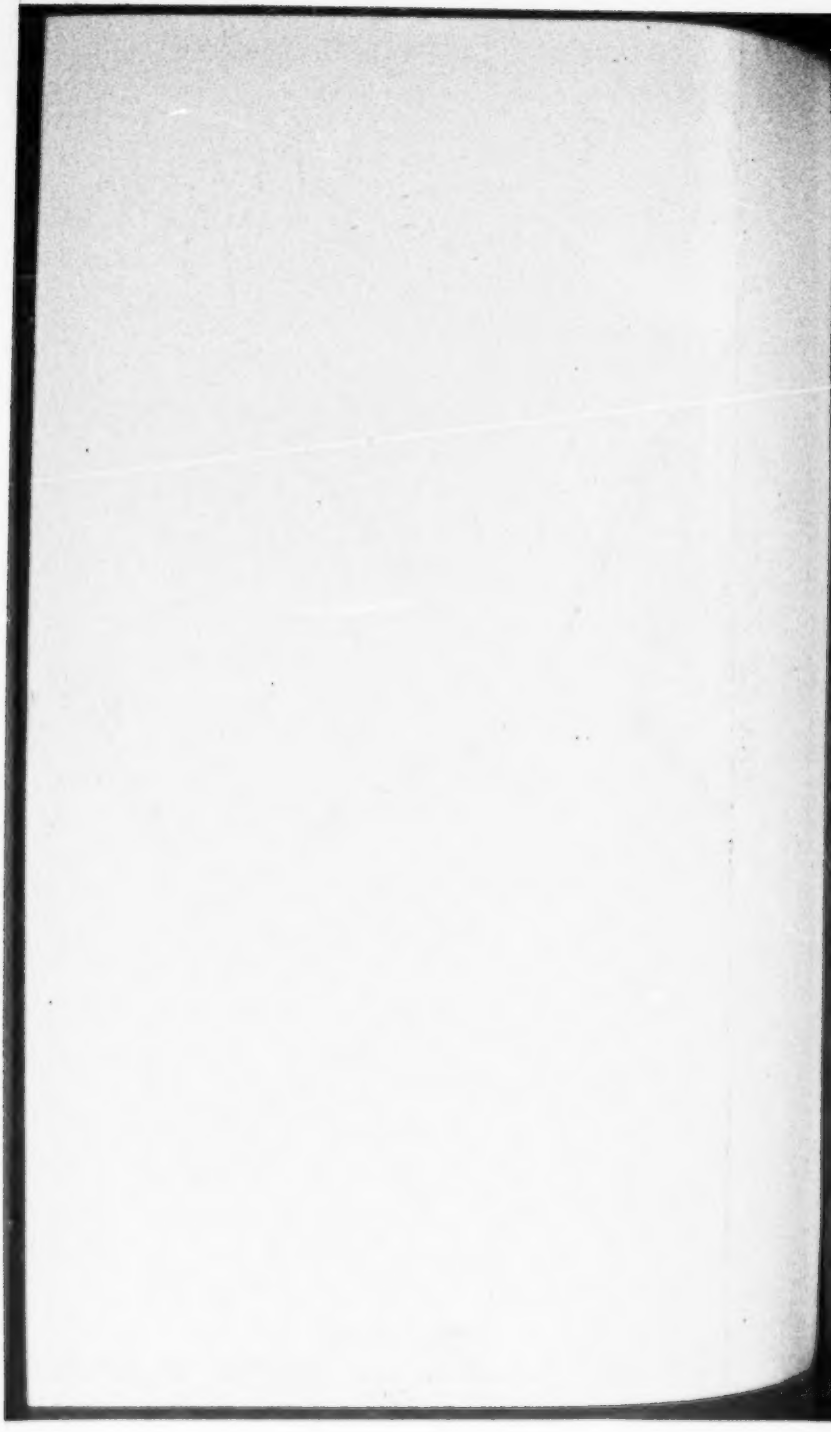
[SEAL.] In testimony whereof, &c.

(Sig.) B. HARALSON, *Register.*

(Endorsed:) Copy of certificate of entry. Filed in evidence & marked No. "2." (Sig.) E. H. Pennall, dep'ty cl'k. Filed July 29, 1886. (Sig.) Aleck Boarman, judge.

(Here follows plat marked p. 88*a*.)

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED



State Patent.

[Eagle, shield, & arrows.]

No. 1383.

THE UNITED STATES OF AMERICA,
State of [Seal of] Louisiana.

Whereas Wm. W. Smith, of the parish of Caddo, in the State of Louisiana, has exhibited and deposited in the State land office a certificate from the register of said office, issued May 14th, 1853, from which it appears that the said Wm. W. Smith has purchased with warrant No. 1 a certain shallow lake known as Silver Lake and situated in the parish of Caddo, in township No. eighteen north, of range- Nos. thirteen & fourteen west, containing one hundred & eighty-six $\frac{57}{100}$ acres according to the official plat of the survey of the said lands returned to the State land office by the surveyor of the United States for the State of Louisiana; which said tract has been purchased and paid for at $1.25 per acre, and is in the northwestern land district of Louisiana:

Now, know ye that the State of Louisiana, in consideration of the premises and in conformity with law, have given and granted, and by these presents do give and grant, unto the said William W. Smith and to his heirs or assigns the said tract above described; to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances of whatever nature thereunto belonging, to the said William W. Smith.

In testimony whereof I, P. O. Hebert, governor of the State of Louisiana, have caused these letters to be made patent and the seal of the land office of the State to be thereunto affixed.

136-46 Given under my hand, at the city of Baton Rouge, this twenty-fourth day of February, in the year of our Lord one thousand eight hundred and fifty-five, and of the Independence of the United States the seventy-ninth.

By the governor:

(Sig.) P. O. HEBERT.

(Sig.)

L. SIGUR,
Register of the Land Office.

Record of Patents, vol. 2nd, page 88.

Endorsed: Filed in evidence, "mark- (A)." (Sig.) N. E. Wright, clerk. Patent filed in evidence Nov. 22, 1860, and marked No. "10." (Sig.) E. H. Pennall, deputy cl'k. Filed May 31, '56. (Sig.) Thos. H. Pitts, dep. cl'k. Filed July 29th, 1886. (Sig.) Aleck Boarman, judge.

Certified Copy of Field-Notes.

At a white oak 20 in. dia., S. 19 E. 46 lks.; white oak 18 in. dia., N. 19 W. 28 lks.

At a white oak 24 in. dia., S. 45 W. 68 lks.; ash 15 in. dia., N. 42 E. 93 lks.

B. Black oak 18 in. dia., N. 84 E. 55 lks.; hickory 12 in. dia., S. 51 E. 46 lks.

Hickory oak 20 in. dia., S. 36 W. 58 lks.; red oak 18 in. dia., N. 32 W. 81 lks.

A. Willow 18 in. dia., S. 28 W. 16 lks.; willow 12 in. dia., N. 19 E. 11 lks.

B. Post oak 12 in. dia., S. 25 W. 17 lks.; elm 12 in. dia., S. 89 E. 32 lks.

C. Sweet gum 12 in. dia., N. 40 E. 14 lks.; sweet gum 20 in. dia., N. 32 W. 18 lks.

Traverse of Silver Lake.

From the point C traversed Silver Lake, viz: S. 30 E., 10.00; S. 60 E., 8.00; N. 30 E., 6.00; S. 20 E., 6.00; S. 64 E., 6.00; N. 35 E., 8.00; N. 35 W., 11.00; N. 45 E., 5.00; N. 87 E., 15.84, to Larking Edwards' corner; thence S. 75 E., 14.00; S. 56¾ E., 32.10, to post on line between sections 31 & 32; thence in front of section 32 S. 50 E., 6.00; south, 3.50, to High Bluff; S. 65, W. 5.10, to corner of 31 & 32, on southern margin of Silver Lake.

Traverse of Silver Lake in front of sect. 31.—S. 65 W., 8.00; N. 84 W., 10.00; S. 45 W., 15.00; N. 20 W., 10.00; N. 55 W., 10.00; S. 47 W., 14; N. 57 W., 10; N. 27 W., 8.00; N. 59½ W., 21.25, to traverse post on range, corner to sections 31 & 36; thence with the traverse of Edwards' claim N. 34 W., 10.00; north, 5.00; S. 6 E., 6.00, to place of beginning.

LAND OFFICE, LA., *June 10th*, 1853.

I, W. H. Crenshaw, register of the land office of La., do
136–47 hereby certify the above to be a true copy of the field-notes, as certified by the surveyor general of La., on file in this office.

(Sig.) W. H. CRENSHAW, *Register.*

STATE LAND OFFICE, BATON ROUGE, LA., *May 14th*, 1856.

I hereby certify the foregoing field-notes and accompanying sketches to be true copies of the originals on file in this office, which have been approved by the surveyor general of Louisiana.

[SEAL.] In testimony whereof I have hereunto affixed the seal of my office the day above written.

(Sig.) B. HARALSON, *Register.*

(Here follows plat marked p. 92*a*.)

R 13 x 14.

North Western District La

Notes

A A White oak 20 in dia Sy E 46 Lks.

No. 276.
U. S. to RRG
Smith et al
} 92 a

Land Office La
June 10th 1853

the above is a true copy of original on file in this office W H Crenshaw
Register

Land Office.
I certify the foregoing Plat to be a true copy from the original on file in this office
Witness my hand and seal of office this 3rd day of October 1876.
S. O. Packard
U. S. Surveyor
N. W. District La.

929

Endorsed: Plat. T. 18, R. 13, & T. 18, R. 14. Shreveport & Silver Lake. (Sig.) Leonard. Filed July 29th, '86. E. J. Nolan, d'y clerk.

STATE OF LOUISIANA
vs.
W. W. SMITH. } No. 5135.

(Index omitted in printing. See general index.)

Transcript from State Court of Louisiana.

Petition.

To the judge of the 18th judicial district of the State of Louisiana, parish of Caddo:

The petition of the State of Louisiana, herein represented by the undersigned, district attorney, specially empowered by R. C. Wickliffe, governor, to institute this suit, with respect represents that the legislature of the said State of Louisiana passed a law, which was approved by P. O. Hebert, governor, on the 30th day of April, A. D. 1853, entitled "An act authorizing the register of the land office to sell certain shallow lakes in the State of Louisiana," which said act was promulgated by publication in the official State paper on the 23rd day of June, A. D. 1853, and that said act provided that the register of the land office at Baton Rouge be authorized to sell all the shallow lakes in this State the area of which has been ascertained by surveys and which are susceptible of being reclaimed, wholly or in part, by draining or leveeing: Provided, that this act shall not apply to any swamp lakes in this State, provided said sale shall not be made until the lands have become the property of the State and been legally surveyed and the surveys been recognized by the State.

Petitioner represents that on the 14th day — May, A. D. 1853, William H. Crenshaw, register of the land office at Baton Rouge, pretending to act under said law, sold to William W. Smith,
136–48 of the parish of Caddo, who pretended, by his agent, Jno. S. Gooch, to purchase under said law, the following-described lands, lying and being situated in the parish of Caddo and adjoining the town of Shreveport, said lands at the time of said sales being shallow lakes, viz: Cross Lake, section 25, township 18, range 14, containing 21.18 acres, at one dollar and twenty-five cents per acre, for which *for which* a certificate of purchase and entry was delivered to said Smith, who is now in full possession of the same; also Silver Lake, section —, township 18, ranges 13 & 14, containing 186.57 acres, at one dollar and twenty-five cents per acre, for which a certificate of entry was issued to said Smith by L. J. Segur, register; but petitioner avers that the sale or entry of Silver Lake had

been cancelled by W. H. Crenshaw, register, as appeared upon the records of the office, on the 10th day of June, 1853, and of this act said Smith had due notice.

Now, your petitioner alleges that said recited act of sale, entry, and patent are null; that they were done without authority of law, and should be declared null & void by judgment of this court—

1st. Because the law under which said entries were made had not been promulgated at the date of said entries.

2nd. Because said lakes had not at the time of said entries been legally surveyed nor had the surveys been recognized by the State, nor have they yet been.

3rd. Because the "patent" to "Silver Lake" was issued by L. J. Segur, register, in error of the fact that the law was not promulgated at the time of the entry, and also in error of the other fact that the said entry had been cancelled before the law had been promulgated; otherwise he would not have issued said "patent." Petitioner alleges the further ground why said sale and entries should be cancelled, the fact that had said sales not been made before the promulgation of said law the same could have been sold for more — one dollar and a quarter per acre, to wit, for the sum of fifteen hundred dollars, and that should said sale, patent, and entries be now set aside they could be sold for twenty-five dollars per acre or more. Petitioner further alleges that he has made a legal tender to said Smith of the sum and interest he paid for said lands, to wit, the sum of three hundred and thirty dollars, and demanded a surrender of said patent and certificate of entry that the same may be cancelled, which the said Smith has refused.

Prayer.

The premises considered, your petitioner prays that the said William W. Smith be cited to appear and answer hereto, and that judgment be rendered against him declaring the said certificate of entry and the said "patent" held by him to the said Cross and Silver Lakes lands null and void; and, further, that he be ordered to return them to the authorities of the State that they may be cancelled. Petitioner prays for all other orders, for costs, and for general relief.

(Sig.) HINTON SMITH,
Dist. Att'y 18th District.

136–49 Endorsed: No. 5135. State of Louisiana *vs.* W. W. Smith. Petition. Filed Dec'r 3d, 1857. (Sig.) A. H. Leonard. Recorded Dec'r 1st, 1860, in Book "J," pages 430 to 432. (Sig.) R. J. Wright, deputy clerk.

Citation to W. W. Smith.

In the District Court for the Eighteenth Judicial District, Parish of Caddo.

STATE OF LOUISIANA *vs.* W. W. SMITH. } No. 5135.

State of Louisiana to W. W. Smith, of the parish of Caddo:

You are hereby cited to appear in the office of the clerk of said court, in the town of Shreveport, in the parish aforesaid, and comply with the demand contained in the petition, of which a copy is hereto annexed, or file your answer thereto, in writing, after the service hereof, with one additional day for every ten miles between your residence and the office of said clerk.

Witness the Honorable David Creswell, judge of the said court, this 3rd day of Dec'r, one thousand eight hundred and fifty-seven.

(Sig.) N. E. WRIGHT,
Dept. Clerk.

Attest:
(Sig.) N. E. WRIGHT, *Dept. Cl'k.*

Endorsed: No. 5135. State of Louisiana *vs.* W. W. Smith. Citation. Filed Dec'r 8th, 1857. (Sig.) N. E. Wright, dep'ty cl'k.

To the judge of the 18th judicial district of the State of Louisiana, parish of Caddo:

The undersigned represents that some time since he filed a suit in the name of the State of Louisiana *vs.* Wm. W. Smith, No. 5135 of the docket, and that for the purposes of prosecuting said suit he obtained a commission to C. M. Bradford, a justice of the peace, New Orleans, ordering him to take the answers of L. J. Segur to certain interrogatories to him propounded, which said interrogatories to him propounded *which said interrogatories and crossed* by the counsel of said W. W. Smith, and the whole made returnable to the December term, 1857, of your court; that said commission has not been returned, but that the same has been lost or mislaid, as will appear by letter of said C. M. Bradford, hereto annexed.

Wherefore, inasmuch as the return day of said commission has passed, and the same having, moreover, been lost or mislaid, a second commission is solicited, that the testimony of said L. J. Sigur may be had by the approaching term of court.

(Sig.) HINTON SMITH,
Dist. Att'y 18th Dist.

136–50 Let due notice issue to W. W. Smith of the filing of this petition and interrogatories and, after the legal delays, let a commission issue as prayed for.

Done and signed in office this 10th of Feb'y, 1858.

(Sig.) N. E. WRIGHT, *Clerk.*

Endorsed: 3135. State of Louisiana *vs.* W. W. Smith. Petition and order for commission to take depositions. Filed Feb'y 10th, 1858. (Sig.) N. E. Wright, clerk.

Exception.

In the District Court of Caddo.

THE STATE OF LOUISIANA
vs.
WILLIAM W. SMITH. } No. 3135.

And now comes the defendant and excepts to the petition and the demand contained therein on the following grounds, to wit:

First. Because the constitution of the State does not authorize the governor to cause suits to be instituted against citizens whenever in his opinion such suits will be beneficial to the State.

Secondly. Because the legislature has conferred on the governor no such power or authority.

Thirdly. Because Hinton, as district attorney, is without legislative authority to institute and maintain this action; &

Fourthly. Because suits of the character of this one cannot be instituted by officers of the State without express legislative sanction.

Wherefore defendant prays that this suit be dismissed with costs, and for general relief.

(Sig.) HODGE, LANDRUM & LAND,
Att'ys for Def't.

Endorsed: 5135. State of La. *vs.* W. W. Smith. Exception. Filed March 30th, 1858. (Sig.) F. A. Leonard, dep. cl'k.

Judgment of Dismissal.

18th District Court, Parish of Caddo, State of Louisiana.

STATE OF LOUISIANA
vs.
W. W. SMITH.

In this case, by reason of the law and evidence being in favor of defendant, it is ordered, adjudged, and decreed that the exception be sustained and suit dismissed at plaintiff's costs.

Thus done and signed in open court this 1st May, 1858.

(Sig.) D. CRESWELL,
Judge 18th Dist.

136-51 *Motion for Appeal.*

STATE OF LOUISIANA
vs.
WM. W. SMITH. } No. 5135.

The plaintiff, by counsel, represents that the judgment dismissing this action on exceptions and motions of defendant is contrary to law and will effect injuriously its rights unless the same be reserved.

Wherefore plaintiff prays to be allowed an appeal, returnable to the supreme court of the State of Louisiana, to be holden at Monroe on the second Monday of July next, and that all legal notices and orders be made in this behalf.

(Sig.) HINTON SMITH,
Dist. Att'y 18th Jud'l Dist.

Let an appeal be granted, returnable to the supreme court, to be held at Monroe on the second Monday of July next.

Endorsed: 5135. The State of Louisiana *vs.* W. W. Smith. Appeal. Filed April 29th, 1858. (Sig.) J. A. Kennedy, D. C.

Appeal Bond.

Know all men by these presents that we, the State of Louisiana, represented by Hinton Smith, dist. att'y for 18th judicial district, as principal, and Roland Jones, as surety, are held and firmly bound unto W. W. Smith, his heirs and assigns, in the sum of one hundred and fifty dollars; for the payment of which we bind ourselves firmly and *in solido*.

Dated this 10th day of June A. D. 1858.

The condition of the above obligation is such that whereas a certain judgment was rendered at the March term, 1858, of the district court in and for Caddo parish, entitled The State of Louisiana *vs.* W. W. Smith, No. 5135 on the docket of said court, from which judgment the plaintiff herein, represented by Hinton Smith, dist. attorney as aforesaid, has taken a devolutive appeal:

Now, if the said plaintiff shall prosecute said appeal and pay all such costs as the said defendant, W. W. Smith, shall sustain in case said judgment shall be affirmed, then the above bond to be null and void; otherwise to remain in full force and virtue.

(Sig.) HINTON SMITH,
Dist. Att'y 18th Jud'l Dist.

(Sig.) ROLAND JONES.

Endorsed: 5135. State *vs.* W. W. Smith. Appeal bond. Filed June 10th, 1858. (Sig.) R. J. Wright, dep'ty clerk.

136-52 *Petition of Revival.*

District Court, Parish of Caddo, State of Louisiana.

STATE OF LOUISIANA
vs.
WM. W. SMITH. } No. 5135.

The undersigned, district attorney for the 18th judicial district, with respect represents that since the institution of the above-entitled cause the defendant, W. W. Smith, is deceased, and that Jno. W. Smith has been, by order of this court, appointed the administrator of his succession.

Wherefore petitioner, adopting all the allegations and demands of the original petition, prays that the said John W. Smith be cited to defend this action, and further asks for service upon all other legal representatives, for costs, and general relief.

(Sig.) HINTON SMITH,
Dist Att'y 18th Dist., for the State of Louisiana.

Service accepted. Citation and time waived.

(Sig.) L. M. NUTT,
Att'y for Adm'r.

Endorsed: No. 5135. State of Louisiana *vs.* W. W. Smith. Petition of revival. Filed Febr'y 14th, A. D. 1859. (Sig.) E. H. Pennall, dep'ty clerk.

Answer.

STATE OF LOUISIANA
vs.
W. W. SMITH. } No. 5135.

And now comes John W. Smith, administrator of the succession of W. W. Smith, deceased, and for answer denies all the allegations in plaintiff's petition and herein admitted.

He says he is the owner of all the right, title, and interest of Louisiana to the land claimed by virtue of a patent hereto annexed and made part hereof; that he purchased said land from the State of Louisiana according to law, and is owner of all the right and title thereof.

He prays that this suit be dismissed at plaintiff's costs and for trial by jury.

(Sig.) LANDRUM, *For Dft.*

Endorsed: No. 5135. State of La. *vs.* W. W. Smith. Answer. Filed April 29th, 1859. E. H. Pennall, dep'ty cl'k.

136-53 *Bill of Exceptions.*

In District Court, Parish of Caddo.

STATE OF LOUISIANA
vs.
WM. W. SMITH. } No. 5135.

Be it remembered that, the above case being fixed for trial this day (Friday, April 29th), and after it was called for trial and the plaintiff announced himself [itself] ready, the defendant, by his counsel, filed his answer, in which he prayed for a trial by jury.

The plaintiff, by its counsel, moved the court to strike out the prayer for jury as coming too late, and stated as facts, which were assented to — the court, that this case had been fixed for trial, on the week before last for last week, when the jury had not been discharged, and, being reached, it was again, last week, before the jury were discharged, fixed for trial on this day (Friday April 29); that under these circumstances the prayer for jury ought not to be allowed after the jury were discharged for the term, thereby necessitating the continuance of the case; but the court overruled the motion to strike out and allowed a jury; to which ruling of the court the plaintiff, by its counsel, excepts and tenders this bill, which it prays may be signed and made a part of the record, which is accordingly done, in open court, this 29th day of April, 1859.

(Sig.) D. CRESWELL,
Judge 18th Dist.

Endorsed: State of La. *vs.* W. W. Smith. Bill of exceptions tendered by plaintiff. Filed April 29th, 1859. (Sig.) E. H. Pennall, dep'ty clerk.

Amended Answer.

STATE OF LA.
vs.
W. W. SMITH. } No. 5135.

The defendant, adopting all the allegations of his original answer, with leave of the court, amends his said answer by praying for trial by jury.

(Sig.) GEO. WILLIAMSON,
HODGE & AUSTIN, *Att'ys.*

Endorsed: 5135. State of La. *vs.* W. W. Smith. Amended answer. Filed Nov. 28th, 1859. (Sig.) E. H. Pennall, dep'ty clerk.

136-54 *Evidence.*

THE STATE OF LOUISIANA
vs.
W. W. SMITH.

Plaintiff's evidence.

Copy of acts of Louisiana relative to sale of shallow lakes, of date 1853, filed in evidence and marked "A," with the certificate of promulgation annexed thereto.

Certificate of entry and cancellation of entry filed in evidence and marked "C."

HISTON SMITH, sworn, says that before the institution of this suit he made a tender to W. W. Smith of $330.00 in gold, current coin of the United States, as the district att'y, acting in behalf of the State of Louisiana, and demanded of W. W. Smith a surrender of the patent and certificate of entries of the lands in controversy. This tender and demand was made in the presence of L. D. Marks and James S. Flournoy.

Cross-examined, says that Judge Jones furnished witness with the money he tendered to W. W. Smith. The money was — to witness as an officer of the State. He was then acting as the district att'y for the 18th district court of Louisiana. Witness does not know whose money it was that he tendered to W. W. Smith. Judge Jones handed witness the money, and as soon as the tender was made witness returned the money to Judge Jones. Witness did not have the money more than an hour. Witness is not apprised of any appropriation of money by the State to refund this money to def't. No officer of the State ever gave witness any money to tender to defendant.

Re-examined by plaintiff:

Witness states that Judge Jones was assistant counsel with witness in the preparation and management of this suit until he went on the bench. Witness knows of no law authorizing the employment of assistant counsel in the case. Witness was authorized by letter from the governor of this State to bring this suit. The letter was handed to witness by Judge Jones.

Depositions of W. L. Crenshaw and Bertrand Harralson filed in evidence and marked "D."

Testimony of Mathew Watson, as admitted by counsel, filed in evidence and marked "E."

It is admitted that M. Watson was sheriff of Caddo parish at the time he served the notice alluded to in his evidence.

THOS. P. HOTCHKISS, sworn, says:

When he first knew Silver Lake, in 1837, the lake was a body of clear water. The water passed into Silver Lake from Red
136–55 river at a low place at the head of the lake, in very high water and passed out at the lower end of the lake, rendering a part of the lake muddy from the mixing of the Red River water.

Witness thinks that Silver Lake rose from two to three feet at times from water running from the hills. There was places in the lake when clear that were from fifteen to eighteen feet deep when he first knew it, where witness often fished. During low stages of the river the water in the lake was higher than the river. The lake did not run into the river except when the river was very high. The lake was supposed to have been formed from springs and rainwater. There were several springs, the branches from which run into the lake. When the river bank broke into the lake the deposit from the river commenced filling up the lake. In 1838, when the lands in Caddo parish were surveyed, the lake would not become dry from evaporation. Witness thinks the river broke through into the lake in the winter of 1843 or 1844. Witness thinks that when the river broke through into the lake the filling up of the lake by deposit was pretty rapid. The corporation of Shreveport had a ditch cut from Silver Lake into Red river for the purpose of draining the lake to prevent sickness. The number of fish dying from the lake becoming shallow was feared would produce sickness, and therefore the ditch was cut for the purpose of draining. In 1838 witness considered Silver Lake a permanent body of water. A ditch was cut from the lake to a steam saw-mill — carry water to furnish the mill, and the mill was furnished with water the year round from the lake. It was witness' impression that the water was supplied the mill the ye[illegible]round. The lake on the hill side in 1838 was very deep, but on the side next to the river the bank sloped off and was not so deep. In 1838 the lake was so deep that it could not have been waided by persons to make a survey of it. Silver Lake never dried up until the ditch was cut by the corporation of Shreveport. The lake had fish in it in 1851—perch, trout, cat, and other kinds of fish. Perch and trout prefer clear water.

Cross-examined:

Since he has known the lake it was always lower in summer than in winter and spring. Red river, when very high, always ran into Silver Lake since witness knew it. At no time since witness knew the lake has the bottom of the lake been dry at low water except a portion of the upper end. Witness does not think that Silver Lake could have been reclaimed by leveeing and ditching when he first knew it; thinks the water was too deep. The lake could not have been drained by cutting a ditch into the river, but supposes that if a levee was built down the river and a draining machine was fixed

that the lake might have been drained. Witness has fished in Silver Lake since 1851, but the fishing was not so good as previously. The lake had filled up very much from deposit. Silver Lake might have been drained by artificial means in September, 1850, but it would have kept a machine throwing out water all the time. A common ditch would keep the lake drained at this time. Witness 136–56 thinks that in 1851 or '52 the bottom of the lake was so much filled up that the greater portion of the lake was higher than the water in Red river at low water. Witness thinks that a great portion of the deposit in Silver Lake was made from the overflow of 1849. The filling up of the lake was from natural causes, such as the breaking in of Red river. The lake was entirely — in the summer since the cutting of the ditch, except, perhaps, the summer — 1857. When Red river is up it overflows Silver Lake now as much as it did in 1850 or 1851.

Re-examined in chief:

SAM'L WELIS, sworn, says:

The ditch made in Silver Lake by the corporation was in 1855. Witness' knowledge of the lake commenced in 1853. He never knew the lake to dry before the cutting of the ditch in 1855. In 1854 some fish died in the lake, but the lake never dried up. In 1855 the fish died abundantly.

Cross-examined:

Says in 1854 a considerable portion of the upper part of the lake was dry; does not know about the lower part.

THOMAS M. GILL, sworn, says:

Has known Silver Lake since 1847. The lake was never dry from 1847 until the ditch was cut. The lake was supplied with water from springs when Red river was low.

GEO. WILLIAMSON, sworn, says:

He procured the testimony of S. J. Segure in case of W. W. Smith *vs.* Roland Jones, and caused two or three commissions to issue for the purpose of taking his testimony in this case, and failed to get his evidence taken by reason of his changing his residence, and also on account of his death.

Defendant's Evidence.

Patent from the State of Louisiana to W. W. Smith, filed in evidence and marked "No. 1," with leave to substitute copy.

Certified copy of certificate from land office at Baton Rouge, filed in evidence and marked "No. 2."

Certified map of Silver Lake and certificates and notes, filed in evidence and marked "No. 3."

No. 284.

An act authorizing the register of the land office to sell certain shallow lakes in the State of Louisiana.

Be it enacted by the senate and house of representatives of the State of Louisiana in General Assembly convened, That the register of the land office at Baton Rouge be, and he is hereby, authorized to sell the shallow lakes in this State the area of which has been ascertained by survey and which are susceptible of being reclaimed, wholly or in part, by draining and leveling: Provided, that this act shall not apply to any navigable lakes in this State, provided said sale shall not be made until the lands have become the property of the State and been legally surveyed and the surveys recognized by the State.

136–57

(Signed) E. WARREN MOISE,
Speaker of the House of Representatives.

(Signed) W. W. FARMER,
Lieutenant Governor & President of the Senate.

Approved April 30th, 1853.

(Signed) P. O. HEBERT,
Governor of the State of Louisiana.

OFFICE OF THE SECRETARY OF STATE.

I hereby certify the foregoing to be a true copy of the original act on file in my office.

Given under my hand and seal of the State, at Baton Rouge, this tenth day of June, A. D. eighteen hundred and fifty three, and of the Independence of the United States of America the seventy-seventh.

(Sig.) ANDREW S. HERRON,
[SEAL.] *Secretary of State.*

OFFICE OF THE SECRETARY OF STATE.

I hereby — that the act approved April 30th, A. D. 1853, entitled "An act to authorize the register of the land office to sell certain shallow lakes in the State of Louisiana," was promulgated in the official State paper on the 23rd day of June, A. D. 1853.

Given under my hand and the seal of the State, at Baton Rouge, this 13th day of May, A. D. 1856.

(Sig.) A. DUPLANTIER,
Ass't Secretary of State.

Endorsed: Filed in evidence and marked "A." (Sig.) M. E. Wright, clerk.

LOUISIANA LAND OFFICE,
BATON ROUGE, *May 14th*, 1853.

Certificate No. 1.

It is hereby certified that, in pursuance of law, Wm. W. Smith, of the parish of Caddo, in the State of Louisiana, on this day purchased of the register of this office the following-described land, to wit: The shallow lake known as Silver Lake, in the parish of Caddo, in township No. eighteen, of ranges thirteen and fourteen, being in the northwestern land district of Louisiana and containing one hundred and eighty-six & $\frac{57}{100}$ acres, at the rate of one and $\frac{25}{100}$ dollars per acre, amounting to two hundred and thirty-three
136–58 $\frac{31}{100}$ dollars, for which the said Wm. W. Smith has made payment in full, as required by law.

(Signed) W. H. CRENSHAW, *Register*.

STATE LAND OFFICE,
BATON ROUGE, LA., *June 18th*, 1856.

The above certificate is a true copy of the original on file in this office, by virtue of which patent No. 1383 was issued February 24th, 1855, as per record of this office.

In testimony whereof, etc.

[SEAL.] (Sig.) B. HARALSON, *Register*.

(NOTE.—The certificate of cancellation filed in evidence has been lost or mislaid, as it is not to be found in the record of this suit at this time, and is therefore omitted.)

Endorsed: Filed in evidence and marked "B." (Sig.) N. E. Wright, clerk.

MAY 14TH, 1853.

Purchaser, Wm. W. Smith.

Subdivision, Cross Lake.

Section 25, township 18, range 14; quantity, 21.18; price per acre, $1.25; $26.47.

Order No. 2.

STATE LAND OFFICE,
BATON ROUGE, *May 22nd*, 1856.

I hereby certify the above and foregoing to be a true and correct transcript of entry as taken from order book of swamp land now on file in my office.

(Sig.) B. HARALSON, *Register*.

Endorsed: Certificate of entry by Wm. W. Smith of Cross Lake, in sec. 25, township 18, R. 14, 21.18 acres. Filed in evidence and marked "C." (Sig.) N. E. Wright, clerk.

The State of Louisiana to any judge or justice of the peace of the parish of East Baton Rouge, State of Louisiana, in and for the same, or to any other duly commissioned and authorized officer to take testimony in civil cases by commission in and for the same, Greeting:

Know ye that we, reposing full and entire confidence in your integrity and ability, do hereby empower and authorize you to cite and cause to appear before you William H. Crenshaw and B. Haralson, witnesses on the part of the plaintiff in a certain suit now pending in the district court in and for the parish of Caddo, State of Louisiana, numbered 5135, in which The State of Louisiana is plaintiff and William W. Smith is defendant, and the answers of the said witnesses under oath to the annexed interrogatories you shall reduce to writing and cause the said answers to be sub-
136–59 scribed by said witnesses, and, after having duly certified the same under your hand and private seal, you will enclose with this commission and interrogatories, seal, and direct the same to the clerk of our said court on or before the 5th Monday in December instant.

Witness the Honorable David Creswell, judge of our said court, this 7th day of Dec'r, A. D. 1857.

(Sig.) A. H. LEONARD, *Dep. Clerk.*

THE STATE OF LOUISIANA
vs.
WILLIAM W. SMITH.

Interrogatories to be propounded to Wm. H. Crenshaw and B. Haralson, residents of Baton Rouge, Louisiana, whose answers hereto are to be used in evidence by plaintiff on trial of the above-entitled cause.

To Wm. H. Crenshaw:

Int. 1st. Were you acting register of the State land office in the year 1853, and at the time Silver Lake and Cross Lake—the former in township 18, range 14, in the parish of Caddo—were entered? If yea, who entered the said lands and for whom were they entered? Did not Jno. S. Gooch enter them for W. W. Smith?

Int. 2nd. State under what law said lakes were sold by you and entered by Smith, and also state the date of the passage of the law and of its promulgation, and also the date of said entry.

Int. 3rd. Did said Smith or his agent claim to enter said lakes under the laws of Congress granting swamp and overflowed lands in Louisiana to the State; if not, under what law did he claim to enter the same?

Int. 4th. At the time you sold said lakes had you any authority of law for so doing? If you had not, say whether you sold same in error, and if you did, what was the error.

Int. 5th. Did you or not cancel on the records of your office the said entry of Smith of Silver Lake? If yea, say when, and did you not give him notice of the same and offer to refund the price paid?

Int. 6th. Was said notice served on Smith, and was a return of the service, as made by Mathew Watson, sheriff of the parish of Caddo, sent your office at Baton Rouge? If yea, say about what time the notice was issued and returned as served on W. W. Smith.

Int. 7th. Have you made diligent search for said return in the land office at Baton Rouge; and, if so, have you found it?

Int. 8th. Did B. Haralson, present register, make said search with you?

Int. 9th. Do you or not know said Smith and his agent, Jno. S. Gooch, had notice of said cancellation in a few days after it
136–60 was made, and did you not inform them or either of them of the fact in person?

Int. 10th. Were any of the formalities required by the laws of Congress granting the swamp and overflowed lands to the State, or the formalities required by the act of the legislature of 1853, approved April 30th, 1853, and entitled An act authorizing the register of the land office to sell certain shallow lakes in the State of Louisiana, complied with at the time said Silver Lake was sold to Smith? Had said lands been selected by the State as swamp and overflowed lands and listed to the State as such? Had they become the property of the State and approved as such by the proper authorities at Washington city? Had they been legally surveyed by the proper officers, and had said surveys been approved by the State?

To B. Haralson:

Int. 1st. Are you acting register of the State land office at Baton Rouge, Louisiana? If yea, please say for how long you have been so acting.

Int. 2nd. Were any of the formalities required by the laws of Congress granting the swamp and overflowed lands to the State or the formalities required by the act of the legislature of 1853, approved April 30th, 1853, and entitled An act authorizing the register of the land office to sell certain shallow lakes in the State of Louisiana, complied with at the time Cross Lake, described as section 25, township 18, range 14, containing 21 acres, and Silver Lake, described as sections —, township 18, range- 13 & 14, containing $186\frac{17}{100}$ acres (all lying in Caddo parish), were sold to W. W. Smith? Had said lands been selected by the State as swamp or overflowed land and listed to the State as such? Had they become the property of the State and been approved as such by the proper authorities at Washington city? Had they been legally surveyed by the proper officers, and had said surveys been approved by the State? Also state here whether all of these formalities and requirements have been as yet complied with; and, if they have, say when.

Int. 3rd. Has any one applied to you to enter Silver Lake and other shallow lakes in this State, and what disposition did you make of such applications? Did you reject them; if so, why?

Int. 4th. Have you examined the records of the land office for the return of the notice to W. W. Smith of the act cancelling his entry of Silver Lake, and have you found it?

Int. 5th. How are lands belonging to the State of Louisiana disposed of when there are different applicants of equal rights claiming or proposing to enter the same tract?

Int. 6th. Do you not under circumstances as set forth in the next preceding interrogatory offer the land to the last and highest bidder? And please state here what is or has been the custom of the land office in such causes.

136–61 Int. 7th. State anything else you may know pertaining to this case.

(Sig.) HINTON SMITH,
Dist. Att'y, 18th Dist.

THE STATE OF LOUISIANA
vs.
WILLIAM W. SMITH.

Interrogatories to Wm. H. Crenshaw and B. Haralson.

Defendant accepts service and waives time, reserving all legal exceptions to the competency of the witnesses, to the pertinency of the questions, and the admissibility of the answers under the pleadings, and all other legal exceptions whatever, and propounds the following cross-interrogatory to Wm. H. Crenshaw:

X Int. 1. At whose instance did you make the cancellation of the entry and how did you make it?

(Sig.) LANDRUM & LAND, *For Def't.*

District Court, Parish of Caddo.

THE STATE OF LOUISIANA
vs.
WILLIAM W. SMITH. } No. 5135.

By virtue of a commission issued by the honorable the eighteenth district court in and for the parish of Caddo and to me delivered, I, John R. Dufroy, a justice of the peace in and for the parish of East Baton Rouge, State of Louisiana, have caused William H. Crenshaw and Bertram Haralson to appear before me, after legal summons, at my office, in the town of Baton Rouge, and who, after being sworn on the Holy Evangelist, have made the following answers to the annexed interrogatories and cross-interrogatories, respectively:

Answers of Wm. H. Crenshaw.

Answer to first interrogatory. I was. The entry was made by J. S. Gooch, I believe, for W. W. Smith.

Answer to second interrogatory. The sale was made under an act of the legislature approved April 30th, 1853. As to date of promulgation, reference must be had to the acts of the legislature. The books in the land office show the entry to have been made on the 14th May, 1853.

Answer to third interrogatory. They did not. I have answered above, under special act of the legislature.

Answer to fourth interrogatory. At the time of sale I thought I sold in conformity to law. I afterwards was satisfied I was in error, the law not having been promulgated.

136–62 Answer to fifth interrogatory. I did make an entry to cancel, and gave notice immediately.

Answer to sixth interrogatory. I sent the notice — the sheriff of Caddo parish, and it was returned to the land office endorsed as having been served by M. Watson as sheriff.

Answer to seventh interrogatory. I have searched and failed to find it.

Answer to eighth interrogatory. He did.

" " ninth " My recollection is that I informed J. S. Gooch in the land office and showed him the entry I made cancelling the sale.

Answer to tenth interrogatory. I supposed the formalities of the law to have been complied with. They were never claimed as "swamp land" or sold as such. The legality or illegality of the sale is for the courts to determine. My opinion would have no weight in controlling its decision. I therefore feel it unnecessary to answer the whole interrogatory.

Answer to eleventh interrogatory. Know nothing else.

Answer to cross-interrogatory. My recollection is that the cancellation was made at the instance of Judge R. Jones, who pointed out the fact of no publication having been made. I made a marginal note on the book showing the order of sale, and gave notice to the parties.

(Sig.) W. H. CRENSHAW.

Sworn to and subscribed before me this nineteenth December, 1857.

(Sig.) JOHN R. DUFROEY,
Justice of the Peace.

Answers of Bertrand Haralson.

Answer to first interrogatory. I am at present and have been the acting register of the State land office since the 24th March, 1856.

Answer to second interrogatory. From the records in my office it appears that William W. Smith entered Silver and Cross Lakes on the 14th day of May, 1853. There is on file in the office an old map of township 18 N., range 13 & 14, upon which is represented both Cross and Silver Lakes; but no area is given nor do the lines appear to have been extended. Smith's entry is marked on Silver Lake on the old map, but not on Cross Lake. There is also an approved diagram, made by R. W. Boyd, then surveyor general, dated the 7th day of May, 1853, on file also in my office, representing both lakes, upon — Smith's entry is marked. There is no evidence to show when this diagram was filed. The act of the legislature approved April 30th, 1853, authorizing the sale of shallow lakes was promulgated on the 24th of June, 1853. Smith's entry of said lakes was made prior to the promulgation of the law. There has never been any selection as "swamp" of said lakes, to my knowledge, nor is there any evidence on file in the office to that effect.
136–63 Said lakes are considered by me to be the property of the United States and not of the State of Louisiana. The State does not approve the maps and surveys returned to this office, but receives them as proper surveys upon the approval of the surveyor general of the United States.

Answer to third interrogatory. I have frequently been applied to by persons to enter lakes under the shallow-lake law before referred to, but have refused to sell said lakes, they not having been selected as swamp, and therefore not the property of the State.

Answer to fourth interrogatory. I have examined the record in my office for the notice of cancellation of the entry of Smith of Silver Lake, but have been unable to find it.

Answer to fifth interrogatory. When two or more persons apply at the same time to enter the same land, each with equal right, I have as register desired them to compromise the matter, which has always been done; otherwise I should have exposed the land to the last and highest bidder. Such is the custom in the offices of the United States land district, as I have been informed.

Answer to sixth interrogatory. See answer above.

" " seventh " In the warrant book there is and opposite Smith's entry of Silver Lake the following words in the handwriting of William H. Crenshaw, register, to wit: "This sale is cancelled because sold in error, the law not having been promulgated. June 6th, 1853. (Sig.) William H. Crenshaw, register." The area given of Cross Lake, in section 25, on the diagram referred to above, is only twenty-one $\frac{17}{100}$ acres.

(Sig.) B. HARALSON.

Sworn to and subscribed before me this 19th day of December, 1857.

(Sig.) JOHN R. DUFROEY, *J. P.*

STATE OF LOUISIANA,
Parish of East Baton Rouge.

I hereby certify that the preceding pages, numbered 1, 2, 3, & 4, are the answers of William H. Crenshaw and Bertrand Haralson to the annexed interrogatories, to be used as evidence in the suit pending before the district court of Caddo —, entitled State of Louisiana *vs.* W. W. Smith, and that said testimony was duly taken down by me as they were [it was] delivered by the said parties.

Given under my hand this 19th day of December, 1857.

(Sig.) JOHN R. DUFROEY,
Justice of the Peace.

Endorsed: Filed in evidence and marked "D." (Sig.) N. E. Wright, clerk.

STATE OF LOUISIANA
vs.
W. W. SMITH.

The plaintiff expects to prove by Mathew Watson that in
136–64 the early part of the summer of the year 1853 he received a notice from Wm. H. Crenshaw, then register of the State of Louisiana, at Baton Rouge, addressed to Wm. W. Smith, the defendant, informing said Smith that his entry of Silver Lake, made May 14th, 1853, had been cancelled; that he (the said Watson) served a copy of said notice on the said W. W. Smith so soon as he received the same and made his return of service of the same to the register, W. H. Crenshaw, at Baton Rouge, in due time. The plaintiff cannot prove this fact by any other witness; that it is material, and that due diligence has been used to secure the attendance of said Watson, and that he is absent without the consent or contrivance of the plaintiff or its counsel.

(Sig.) HINTON SMITH,
Att'y for the State.

Endorsed: Filed in evidence and marked "E." (Sig.) N. E. Wright, clerk.

No. 1383.

THE UNITED STATES OF AMERICA,
State of Louisiana.

Whereas Wm. W. Smith, of the parish of Caddo, in the State of Louisiana, exhibited and deposited in the State land office a certifi-

cate from the register of said office, issued May 14th, 1853, from which it appears that said Wm. W. Smith has purchased with warrant No. 1 a certain shallow lake known as Silver Lake, and situated in the parish of Caddo, in township No. eighteen north, of range Nos. thirteen & fourteen west, containing one hundred and eighty-six $\frac{57}{100}$ acres according to the official plat of the survey of the said lands returned to the State land office by the surveyor general of the United States for the State of Louisiana, which said tract has been purchased and paid for at $1.25 per acre, and is in the northwestern land district of Louisiana:

Now, know ye that the State of Louisiana, in consideration of the premises and in conformity with law, have given and granted, and by these presents do give and grant, unto the said William W. Smith and to his heirs or assigns the said tract above described; to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances of whatever nature thereunto belong-, to said William W. Smith.

In testimony whereof I, P. O. Hebert, governor of the State of Louisiana, have caused these letters to be made patent and the seal of the land office of the State to be thereunto affixed.

Given under my hand, at the city of Baton Rouge, this twenty-fourth day of February, in the year of our Lord one thousand eight hundred and fifty-five, and of the Independence of the United States the seventy-ninth.

By the governor:

(Sig.) P. O. HEBERT.
"
L. J. SIGUR,
Register of the Land Office.

136–65 Record of Patents, vol. 2nd, page 88.

Endorsed: Filed in evidence Nov. 12th, 1860, and marked No. 1. (Sig.) E. H. Pennall, deputy clerk.

NOTE.—The documents filed in evidence in this suit and marked Nos. "2" & "3" have been either lost or mislaid and are not to be found with the balance of the record at this time.

Verdict of the Jury.

We, the jury in the case of Louisiana against W. W. Smith, render verdict in favor of plaintiff that the certificate and patent be annulled and delivered up.

(Sig.) WILLIAM A. LACEY, *Foreman.*

Endorsed: No. 5135. The State of Louisiana *vs.* W. W. Smith, Verdict. Filed Nov. 12th, 1860. (Sig.) E. H. Pennall, deputy clerk.

Judgment.

STATE OF LOUISIANA
vs.
W. W. SMITH.

In this case, by reason of the law and the evidence and the verdict of the jury, it is ordered, adjudged, and decreed that the certificates of entry made by W. H. Crenshaw, register, of Silver Lake, section —, township 18, ranges 13 & 14, amounting to 186.57 acres, at $1.25 per acre, and also of Cross Lake, section 25, township 18, range 14, quantity 21.18 acres, at $1.25 per acre, in favor of W. W. Smith, be annulled, avoided, and delivered up; and it is further ordered, adjudged, and decreed that the patent issued on the 24th day of February, 1855, in favor of W. W. Smith, the defendant, for Silver Lake, in the parish of Caddo, township 18, ranges 13 & 14, containing 186.57 acres, and issued by L. J. Sigur, register of the land office, be annulled and avoided and taken up, and that defendant pay costs.

Done and signed in open court on this the 24th day of November, 1860.

(Sig.) W. B. EGAN,
Judge 17th Dist., Presiding.

Endorsed: No. 5135. The State of La. *vs.* W. W. Smith. Judgment. Filed Nov. 24th, 1860. (Sig.) E. H. Pennall, deputy clerk.

Motion for New Trial.

THE STATE OF LOUISIANA
vs.
W. W. SMITH.

The defendant moves for a new trial in the above-entitled
136–66 case upon the ground that the verdict of the jury is contrary to the law and the evidence.

(Sig.) WILLIAMSON & HODGE.

Endorsed: No. 5135. The State of Louisiana *vs.* W. W. Smith. Motion for new trial. Filed Nov. 13th, 1860. (Sig.) E. H. Pennall, deputy clerk.

Motion for Appeal.

STATE OF LOUISIANA
vs.
W. W. SMITH. } No. 5135.

The defendant, Jno. W. Smith, administrator for W. W. Smith, deceased, respectfully represents that the judgment in the foregoing cause will work irreparable injury to the succession if [of] said deceased unless the same be revoked; wherefore he prays that he be granted a devolutive and suspensive appeal from said judgment, returnable to the supreme court of the State of Louisiana on the second Monday of July next, 1861, at its session at the town of Monroe, parish of Ouachita.

He prays for all further necessary orders, decrees, and notices in the premises, and for general relief.

(Sig.) GEO. WILLIAMSON, *Att'y.*

Endorsed: No. 5135. State of Louisiana *vs.* W. W. Smith. Motion for appeal. Filed Nov. 24th, 1860. (Sig.) N. E. Wright, clerk.

Extracts from the Minutes.

STATE OF LOUISIANA, }
Parish of Caddo. }

Be it remembered that on this the 22nd day of March, A. D. 1858, it being the first day of the regular March term, 1858, of the district court of the parish of Caddo—present, the Honl. David Creswell, judge 18th judicial district—met at 1 o'clock p. m. and adjourned until to-morrow, Tuesday, March 23rd, at 9 o'clock.

TUESDAY, *March 30th*, 1858.

Court met, pursuant to adjournment, at 9 o'clock a. m.

STATE OF LA.
vs.
W. W. SMITH. } No. 5135.

Exception filed.

SATURDAY MORNING, *April 3rd*, 1858—9 o'cl'k.

Court met pursuant to adjournment.

STATE OF LA.
vs.
W. W. SMITH. } No. 5135.

Default.

136–67 MONDAY MORNING, *April 13th*, 1858—9 o'clock.

Court opened pursuant to adjournment.

STATE OF LOUISIANA
vs.
W. W. SMITH. } No. 5135.

Exception sustained and suit dismissed at pl'ff's cost.

THURSDAY, *April 29th*, 1858—9 o'clock a. m.

The court met pursuant to adjournment.

STATE OF LOUISIANA
vs.
W. W. SMITH.

Motion for appeal filed and appeal granted, returnable to the next term of the supreme court, to be holden at Monroe on the 2nd Monday of July, 1858. Bond for devolutive appeal $150, and suspensive appeal bond according to law.

Defendant's counsel present takes cognizance.

STATE OF LOUISIANA,
Parish of Caddo.

In 18th Dist. Court.

Be it remembered that a regular term of the district court in and for said parish, begun and holden on the fourth Monday, 25th day, of October, 1858, at the court-house thereof, in the city of Shreveport and in the 18th judicial district of the State of Louisiana, the Honl. David Creswell, judge of said 18th judicial district, presiding.

TUESDAY MORNING, *October 26th*, 1858—9 o'clock a m.

Court met pursuant to adjournment.

STATE OF LOUISIANA
vs.
W. W. SMITH. } No. 5135.

Death of defendant, W. W. Smith, suggested and leave granted to revive against the legal representatives.

STATE OF LOUISIANA,
Parish of Caddo.

At a regular term of the district court, begun and holden in and for the parish of Caddo, State of Louisiana, on the twenty-eighth day of March, 1859, it being the fourth Monday of said month—present, the Honl. D. Creswell, judge; H. J. G. Battle, sheriff, and N. E. Wright, clerk.

136–68 TUESDAY MORNING, *April 12th*, 1859—9 o'clock.

Court met pursuant to adjournment.

THE STATE
vs.
W. W. SMITH. } No. 5135.

Default on petition of revival.

FRIDAY MORNING, *April 29th*, 1859—9 o'clock.

Court met pursuant to adjournment.

THE STATE
vs.
W. W. SMITH. } No. 5135.

Answer filed and prayer for jury and jury allowed, and continued by consent.

STATE OF LOUISIANA,
Parish of Caddo.

At a regular term of the district court, begun and holden in and for the parish of Caddo, State of Louisiana, on the twenty-fourth day of October, 1859, it being the fourth Monday of said month—present, Honorable David Creswell, judge; H. J. G. Battle, sheriff, and N. E. Wright, clerk.

MONDAY MORNING, *Nov'r 8th*, 1859—9 o'clock.

Court met pursuant to adjournment.

THE STATE OF LA.
vs.
W. W. SMITH. } No. 5135.

Amended answer filed and prayer for jury refused.

STATE OF LOUISIANA,
Parish of Caddo.

In District Court.

Be it remembered that at a regular term of the 18th judicial district court, begun and holden on the fourth Monday in March, it being the 26th day thereof, in the year of our Lord one thousand eight hundred and sixty, at the court-house in and for said parish and State, pursuant to the statute in such case made and provided, the Honorable Roland Jones, judge of said 18th judicial district, presiding.

136–69 SATURDAY, *April 7th, A. D.* 1860.

Court met pursuant to adjournment.

THE STATE OF LA.
vs.
W. W. SMITH.

Judge Jones, having been of counsel for plaintiff, recuses himself.

STATE OF LOUISIANA,
Parish of Caddo.

In 18th Judicial District Court.

Be it remembered that at a regular term of said district court, begun and holden on the fourth Monday of October, A. D. 1860, it being the 22nd day thereof—present, the Honorable W. B. Egan, judge of the 17th judicial district, presiding by virtue of an agreement — him and the Honorable Roland Jones, judge of the 18th judicial district, pursuant to the provisions of an act of the legislature of the said State providing for the interchange of judges for trial of recused cases.

MONDAY MORNING, *November 12th*, 1860—9 o'cl'k.

Court met pursuant to adjournment.

THE STATE OF LOUISIANA
vs.
W. W. SMITH.

And now come the parties and announce themselves ready for trial. Whereupon came a jury, to wit, M. Johnson, B. C. Tabor, M. T. J. Alston, S. Countz, W. C. Tyffe, T. B. Jordan, A. W. Marshall, H. Hefner, N. A. C. Hudson, David Stately, J. P. Hailey, and W. A. Lacey, twelve good and lawful men, of the parish of Caddo, sworn to well and truly try the issue joined between the State of Louisiana and the defendant, W. W. Smith, who, after hearing the evidence, argument of counsel, and charge of the court, returned here into open court, and upon their oaths do say:

We, the jury in the case of The State of Louisiana against W. W. Smith, render verdict in favor of plaintiff, that the certificate and patent be annulled and delivered up.

(Sig.) WILLIAM A. LACEY, *Foreman.*

TUESDAY MORNING, *November 13th*, 1860—9 o'clock.

Court met pursuant to adjournment.

THE STATE OF LOUISIANA
vs.
W. W. SMITH. } No. 5135.

Motion for new trial overruled.

136–70 SATURDAY MORNING, *November 24th*, 1860—9 o'clock.

Court met pursuant to adjournment.

THE STATE OF LOUISIANA
vs.
W. W. SMITH. } No. 5135.

Motion for devolutive and suspensive appeal filed by defendant and granted, and ordered by the court that the bond, in case of a devolutive appeal, be fixed at $200.00, and in case of a suspensive appeal according to law.

Whereupon it is ordered that the same be made returnable to the next term of the supreme court, to be holden at the town of Monroe, Ouachita parish, La., commencing on the 2nd Monday of July, 1861. Plaintiff's counsel, being present, takes cognizance of the order of appeal and waives service of citation.

Appeal Bond.

STATE OF LOUISIANA,
Parish of Caddo.

STATE OF LOUISIANA
vs.
W. W. SMITH.

Know all men by these presents that we, John W. Smith, administrator of the succession of W. W. Smith, deceased, as principal, and A. B. Levisee, as security, are held and firmly bound unto the State of Louisiana or to the governor thereof, or his successors in office, plaintiff in the above-stated case, in the sum of two hundred and fifty dollars, for the payment of which we bind ourselves, our heirs and executors, *in solido*, firmly by these presents.

Dated at Shreveport, in the State and parish aforesaid, on this the 7th day of Dec., 1860.

The condition of the above obligation is such that whereas said John W. Smith has obtained an appeal from a certain judgment

rendered adversely to him in the above-stated case, numbered 5135 on the docket of the district court of Caddo parish:

Now, if the said John W. Smith shall prosecute his said appeal to final judgment thereon and shall well and truly satisfy such judgment as may be rendered against him on said appeal, then this bond to be null and void; otherwise to remain in full force and effect.

(Sig.) J. W. SMITH,
Adm'r Est. W. W. Smith.

(Sig.) A. B. LEVISEE.

Endorsed: State of Louisiana *vs.* W. W. Smith. Appeal bond. Filed Dec'r 8th, 1860. N. E. Wright, clerk.

136–71 *Judgment of Supreme Court.*

Supreme Court of the State of Louisiana, Monroe, July Term, 1858.

FRIDAY, *July 23rd*, 1858.

Present: Their hons. E. T. Merrick, chief justice, and A. M. Buchanan, H. M. Spofford, and Jas. L. Cole, associate justices.

STATE OF LOUISIANA, Appellant,
vs.
W. W. SMITH, Appellee. } Appeal from District Court for Parish of Caddo.

In this case the court this day rendered their opinion and final judgment in writing, as follows, by Merrick, chief justice:

Defendant's counsel states the case for our consideration as follows, viz:

This suit was instituted by Hinton Smith, district attorney, at the instance and request of the governor, to annul a patent issued by the State to the defendant for a tract of land known as Silver Lake, purchased by him under the act of the legislature authorizing the register of the land office to sell certain shallow lakes in the State of Louisiana. See acts of 1853, p. 257.

The defendant excepted to the right of the district attorney to institute this suit without legislative authority. The exception was sustained and the suit dismissed. The district attorney has taken this appeal. The right of State to sue is not in question. The right of the district attorney to institute this suit without legislative authority is the question for determination. The State of Louisiana as a sovereign would be singularly deficient in power if there did not at all times exist in some of her officers a capacity to institute suits and take out legal measures on her behalf without awaiting the tardy action of the legislative department, which is in session only sixty days each year; consequently we might confidently expect to find such power granted by the constitution and the laws.

On looking into the constitution we find the powers of the State distributed into three departments—legislative, executive, and judicial. Arts. 1 & 2. Article 38 declares that the supreme executive power of the State shall be vested in a chief magistrate, who shall be styled governor of the State of Louisiana. As these powers are subsequently defined by the constitution, it is supposed that article 55, which declares that "he shall take care that the laws are faithfully executed," limits his power to a mere executioner and enforcement of the laws.

To an argument of extreme nicety it may be replied that the laws give the State of Louisiana the land in controversey; it is but an execution of the laws to enforce them through the intervention of the judiciary.

The governor therefore was authorized to give instructions to the district attorney, and the district attorney was authorized to institute this suit with or without such instructions. Sect. 8 of
136–72 the act of 1885, p. 369, makes it the duty of the district attorneys "to pursue on behalf of the State such legal measures as they may deem expedient for the recovery of all claims of the State the recovery of which is not otherwise provided for, and to report their proceedings annually to the auditor before the meeting of the legislature." Rev'd Stats., p. 183. The next section, granting the district attorneys five per cent. on all amounts by them recovered and paid to the State, does not necessarily limit the more general terms used in the preceding section.

It is therefore ordered, adjudged, and decreed by the court that the judgment of the lower court be avoided and reversed, and that the exceptions be overruled and the cause be remanded to the lower court for further proceedings according to law, and that the defendant pay the costs of appeal.

CLERK'S OFFICE,
SUPREME COURT OF LOUISIANA, MONROE.

I hereby — the foregoing to be a true and correct copy of the original opinion and final judgment rendered by this court at the July term, 1858, in the above entitled cause.

In witness whereof I have hereunto signed my name and affixed the seal of said court this 2nd day of August, A. D. 1858.

(Signed) H. M. BRY, *Clerk.*

Endorsed: No. 653. The State of Louisiana *vs.* W. W. Smith. Copy of opinion and final judgment of supreme court of La., Monroe.

Clerk's Certificate.

STATE OF LOUISIANA, }
Parish of Caddo. }

I, W. P. Ford, clerk of the 1st judicial district court of the State of Louisiana, held in and for the parish of Caddo, do hereby certify

that the above and foregoing fifty-seven pages (57) contain a true, full and complete transcript of all the documents filed, evidence adduced, and proceedings had in the suit entitled The State of Louisiana *vs.* W. W. Smith, No. 5135 on the docket of said district court, except those documents which were either lost or mislaid before my entrance into the clerk's office of said parish.

Given under my hand and official seal, at Shreveport, La., on this 21st day of July, A. D. 1886.

(Sig.) W. P. FORD,
Clerk 1st Dist. Court of La.

Endorsed: No. 5135. State of Louisiana *vs.* W. W. Smith. Filed July 29th, '86. E. J. Nolan, d'y clerk.

136–73 *Application of Jno. W. Smith for Appointment of Counsel for Absent Heirs and Him as Curator of Succession.*

To the hon. the judge of the 18th judicial district of the State of Louisiana in & for Caddo parish:

The petition of Jno. W. Smith, of the parish & State aforesaid, with respect represents that the late W. W. Smith has recently died, leaving a large amount of property, consisting of land, negroes, merchandise, &c., in the parish of Caddo; that the heirs of said Smith, dec'd, are James F. Smith, brother of dec'd, and minor children & heirs of John K. Smith, dec'd, represented by their mother, Annie Smith, *née* Boswell, widow of said John K., dec'd, brother, all of the county of Shelby, in the State of Kentucky; that petitioner is a relative of the dec'd and of his said heirs & is willing to take charge of the succession until the heirs can be heard from and their wishes made known in reference to the estate.

The premises considered, he prays that notice be given of his application for the appointment of counsel of absent heirs, for an inventory & appraisement of the property, for all orders and decrees necessary, &, after legal delay, that he be appointed curator of the succession, & for general relief.

(Sig.) CRAIN & NUTT, *Att'ys.*

Let due notice be given of the foregoing application by publication in a newspaper according to law, & let a commission issue to make an inventory of said succession, & let W. O. Crain be appointed attorney to represent the absent heirs.

Done & signed, at office, this 25th day of Oct'r, 1858.

(Sig.) N. E. WRIGHT, *Clerk.*

I accept the above appointment.

(Sig.) W. O. CRAIN.

CLERK'S OFFICE, CADDO PARISH, LA.

I hereby certify that the above and foregoing is a true and correct copy of the original petition of Jno. W. Smith to be appointed curator of the succession of W. W. Smith, dec'd, No. 715 on the probate docket of the 1st dist. court of La. in and for Caddo parish, as the same now appears on file and of record in this office.

Given under my hand and official seal, at Shreveport, La., this 23rd day of February, A. D. 1886.

(Sig.)
[SEAL.] ALLAN V. WILSON,
Deputy Clerk, 1st District Court of La.

Endorsed: 716. Succession of W. W. Smith. Filed Oct'r 25th, 1858. (Sig.) N. E. Wright, clerk. Copy. Filed July 29th, '86. (Sig.) Aleck Boarman, judge.

136-74 *Extract from Minutes.*

Supreme Court of Louisiana.

CLERK'S OFFICE, NEW ORLEANS, *Feb'y 18th*, '86.

Extract from the Minutes of the supreme court of Louisiana, holding sessions at Natchitoches, Tuesday, August 14th, 1866.

On Tuesday, the 14th day of August, A. D. 1866, the court met at 9 o'clock a. m., pursuant to adjournment.

Present: Hon'ble W. D. Hyman, chief justice; Z. Labauve, associate justice; James G. Talliafero, associate justice.

STATE OF LOUISIANA, Appellee,
vs.
W. W. SMITH, Appellant. } No. 53.

Answer filed. Case continued.

A true copy.
(Sig.) GEORGE W. DUPRÉ, *Clerk.*

Endorsed: State of Louisiana *vs.* W. W. Smith. Extract from minutes. Filed July 29, 1886. Aleck Boarman, judge.

Judgment Homologating Final Account.

STATE OF LOUISIANA,
Parish of Caddo.

In District Court.

Succession of W. W. SMITH. No. 716.

By reason of the law and the evidence, there being no opposition, it is ordered, adjudged and decreed that the final account filed

by John W. Smith, administrator of said succession, on the 2nd day of July, 1867, be, and the same is hereby, homologated, approved, and made the judgment of the court. It is further ordered that said Jno. W. Smith, as adm'r, have judgment against said succession for the sum of three thousand three hundred and thirty-six $\frac{1}{100}$ dollars, balance due him, as shown by said account. It is further ordered that said John W. Smith be discharged from the further administration of said succession, and that his bond as such administrator be cancelled.

Done and signed, at office, this August 3rd, 1867.

(Sig.) R. J. WRIGHT, *Clerk.*

Endorsed: No. 716. Succession of W. W. Smith. Judgment homologating final account. Filed August 3rd, 1867. (Sig.) R. J. Wright, clerk.

136–75 CLERK'S OFFICE, CADDO PARISH, LA.

I hereby certify that the foregoing is a true and correct copy of the original judgment homologating the final account of and discharging John W. Smith from the administration of the succession of W. W. Smith, dec'd, No. 716 on the docket of the 1st judicial district court of La., as the same now appears on file and of record in this office.

Given under my hand and official seal, at Shreveport, La., on this 22nd day of July, A. D. 1886.

(Sig.) W. P. FORD,
[SEAL.] *Clerk 1st Jud'l Dist. Court of La.*

Endorsed: No. 716. Succession of W. W. Smith. Judgment homologating final account. Copy. Filed July 29, 1886. Aleck Boarman, judge.

I, Robert J. Wilson, clerk of the supreme court of the State of Louisiana, holding sessions at Monroe, La., do hereby certify that I have carefully examined the records of said supreme court, and that no appeal in a case entitled "The State of Louisiana *vs.* W. W. Smith," tried and determined in the district court within and for the parish of Caddo, said State, in the month of December, 1860, was ever filed in the supreme court.

In testimony whereof I hereunto set my official signature
[SEAL.] and affix the seal of said court, at the city of Monroe, on this the 26th day of July, 1886.

(Sig.) ROBERT J. WILLSON,
Clerk of C't at Monroe, La.

Endorsed: Filed July 29th, '86. E. J. Nolan, d'y cl'k.

M. D. Brainard, attorney and counsellor at law.

P. O. box —. (Dictated.)

WASHINGTON, D. C., *July 15th*, 1886.

George Hoadley, Jr., ass't gen'l counsel, Cincinnati, Ohio.

DEAR SIR: I am in receipt of your letter of the 13th instant, requesting me to secure an official certificate, under seal, from the Commissioner of the General Land Office of the facts set forth in his letter of June 23, 1886.

In reply permit me to say that I made application this morning for such certificate and my application was refused by the Commissioner on the ground that the law did not authorize him to make such a certificate.

You will have to use this letter in its present shape or take my deposition and attach the letter as an exhibit.

You can prove by me, in addition, that I have personally examined the records of the Land Office and — familiar with them, and know that the statements contained in the Commissioner's letter are true from personal investigations.

Very truly, M. D. BRAINARD.

P. S.—The letter of the 23 to me is herewith returned.

136-76 (Refer in reply to this initial: K.)

1886-65872. R. J. E.

DEPARTMENT OF THE INTERIOR, D. T. P.
GENERAL LAND OFFICE, L. J. W.
WASHINGTON, D. C., *June 23d*, 1886. M. A. C.

M. D. Brainard, Esq., att'y V., S. & P. R. R. Co., Washington, D. C.

SIR: In reply to your letter of the 17th inst. you are advised that, so far as the records of this office show, the State of Louisiana has never claimed lots 1, 2, 3, 4, 5, 6, 7, 8, and 9, sec. 31, T. 18 N., R. 13 W., under the swamp grant, and I find nothing of record here to indicate that the State ever sold said lots as swamp land. Said lots were approved to the State Oct. 7th, 1859, under the grant in aid of the construction of the Vicksburg, Shreveport and Texas, now Vicksburg, Shreveport and Pacific, railroad, made by the act of Congress approved June 3d, 1856, and, being opposite that part of the road completed within the time fixed by said act of 1856, they were reapproved Jan'y 10th, 1874.

Very respectfully,

(Sig.) S. STOCKSLAGER,
Ass't Commissioner.

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Affidavit for Continuance.

ROBERT N. SMITH ET ALS.
vs.
GEO. A. TURNER.

Before me personally came W. H. Wise, counsel, representing the Vicksburg, Shreveport & Pacific Railroad Company, defendant herein, who, being sworn, says that this case has just been put at issue at the present term of this court, and every diligence has been used to get the evidence necessary for defendant's case at the present term, even in advance of the issue being joined; alleges that defendant cannot go to trial without the testimony of —— Sparks and S. M. Stocklager, respectively Commissioner and Assistant Commissioner of the General Land Office of the U. S. Gov't and residents of Washington city, and of M. D. Brainard, of same residence, by whom defendant expects to prove that said named persons have recently examined the records of the General Land Office, at Washington city, and that said records show that the State of Louisiana has never claimed lots 1, 2, 3, 4, 5, 6, 7, 8, & 9, sec. 31, T. 18, R. 13 west, being same land described in plaintiff's petition as swamp and overflowed lands, under the swamp grants of 1849 & 1850, and that said records fail to show that the said State ever sold said land, or that it was ever listed by the Sec't'y of the Interior or General Land Office to the State of La.; and also expects to prove by said witnesses that said land was approved to the State of La. Oct. 7th, 1859, under the grant in aid of the construction of the Vicksburg, Shreveport & Texas, now Vicksburg, Shreveport & Pacific, rail-
136–77 road, made by the act of Congress approved June 3d, 1856, and being opposite that part of the road completed within the time fixed by said act of 1856.

That he knows of no other witnesses by whom these material facts can be proved; that application was made timely to the General Land Office for a certificate setting forth these facts, but it was refused, as will appear by annexed letters, on the ground that such certificate is not admissable or authorized by law.

That he expects to procure this testimony by the next term of this court, and makes this application for a continuance to that term for the purpose of obtaining justice & not for delay; and that the president and other officers of defendant company authorized to make affidavits of this character are now absent from the jurisdiction of this court.

(Sig.) W. H. WISE.

Sworn to & subscribed before me the 29th July, 1886.

[Seal U. S. Circuit Court for the Western Dist. of La.]

E. J. NOLAN, *D'y Cl'k.*

Endorsed: Robert N. Smith *vs.* Geo. A. Turner. Affidavit for continuance. Filed July 29, 1886. (Sig.) Aleck Boarman, judge.

Answer of V., S. & P. R. R. Co.

In U. S. Circuit Court for the Western District of La.

ROBERT N. SMITH ET ALS.
vs.
GEO. A. TURNER. } No. —.

Now comes the defendant, The Vicksburg, Shreveport & Pacific Railroad Company, by counsel, and, for answer to plaintiffs' petition, denies all the allegations thereof and requires strict proof.

Further answering, alleges that the sale or entry of said land, as set forth in petition, was cancelled by the register of the State land office on the 10th day of June, 1853, as appears by the records of that office, and which cancellation was duly notified to said W. W. Smith, and that said sale, entry, and patent are null, and were done without authority of law, in this, to wit:

1st. Because the law under which said entries were made had not been promulgated at the date of the entry.

2nd. Because said land had not at the time of said entry been legally surveyed, nor had any survey thereof been recognized by the State of Louisiana.

3rd. Because the patent to said land was issued by the register in error of the fact that said entry had been cancelled before the law authorizing the sale of shallow lakes had been promulgated.

Further answering, defendant alleges that said land was never selected by the State of Louisiana as swamp and overflowed
136–78 lands, and has never been reported to the Commissioner of the General Land Office and never approved as such by the surveyor general or by the Secretary of the Interior or Land Commissioner; and further alleges that said land was never listed or returned by the Secretary of the Interior to the State of Louisiana as swamp and overflowed lands, and that the State of Louisiana has never claimed or acquired said land as such; and, furthermore, that said land does not and never did belong to that class of lands, but to that other class of lands known or design-ed as "shallow lakes," and therefore not embraced in the grant from the U. S. Government, under the acts of Congress of 1849 & 1850, of swamp and overflowed lands.

Defendant further answering, alleges that said defendant company is the owner of said land by good and sufficient title, by grant from the United States Government under act of Congress approved June 3d, 1856, to the State of Louisiana to aid in the construction of railroads in said State of Louisiana, and which was accepted by said State of Louisiana for such purpose, and all the requirements of said

grant having been complied with by said State and by the Vicksburg, Shreveport & Texas railroad, the land described in plaintiff's petition, being embraced in the said grant, was acquired by said railroad company and duly certified or patented as belonging to said company by the U. S. Government, and which has been legally sold and transferred by said railroad company to defendant company and deed duly recorded.

Further answering, defendant alleges that the land described in plaintiff's petition and sought to be recovered in this suit is worth at least ten thousand dollars.

Wherefore defendant prays that plaintiff's demand be rejected, and for judgment decreeing defendant company to be the owner of said land and quieted in possession thereof, & for general relief.

(Sig.) FRANK P. STUBBS,
" WISE & HERNDON,
Of Counsel for Defendant.

Endorsed: No. 80. Robert N. Smith *et als. vs.* Geo. A. Turner. Answer of V., S. & P. R. R. Co. Filed July 29, '86. (Sig.) J. W. Wheaton, cl'k.

Extract of Minutes of U. S. Circuit Court.

FRIDAY, *July 30th*, 1886.

Court met pursuant to adjournment.
Present: His honor Aleck Boarman, district judge presiding.

R. M. SMITH
vs.
GEO. A. TURNER. } No. 80.

Reserved and continued until to-morrow, Saturday, July 31st, 1886.

136–79 Ordered, that the court do now adjourn until to-morrow morning, Saturday, July 31st, 1886, at 9 a. m.

SATURDAY, *July 31st*, 1886.

Court met pursuant to adjournment.
Present: His honor Aleck Boarman, district judge, presiding.

R. N. SMITH ET ALS.
vs.
GEO. A. TURNER. } No. 80.

This case was again resumed, and, after hearing the argument of counsel and charge of the court, the jury retired to consider of their verdict; returning into open court, do upon their oaths say: "We, the jury, find for plaintiffs, and that the land sued for is described in the plat made by W. R. Devoe and filed in evidence."

Verdict of the Jury.

SHREVEPORT, *July 31st*, 1886.

We, the jury, find for plaintiff-, and that the land sued for is described in the plat made — W. R. Devoe & filed in evidence.

(Sig.) SIMON HEROLD, *Foreman.*

Endorsed: Entered & filed July 31, '86. E. J. Nolan, d'y clerk.

Ordered, that the court *the court* do now adjourn until Monday morning, August 2nd, 1886, at 10 a. m.

MONDAY, *August 2nd*, 1886.

Court met pursuant to adjournment.
Present: His honor Aleck Boarman, district judge, presiding.

R. N. SMITH ET ALS. *vs.* GEO. A. TURNER. } No. 80.

Motion for new trial on part of defendant filed & assigned for argument Wednesday, August 4th, 1886, at 10 a. m.
Ordered, that the court do now adjourn until Wednesday morning, August 4th, 1886, at 10 a. m.

Motion for a New Trial.

In U. S. Circuit Court, Western District of La.

R. N. SMITH ET AL. *vs.* GEO. A. TURNER. } No. —.

Now comes The Vicksburg & Shreveport Railroad Company, the real defendants herein, by counsel, and moves the court to
136–80 grant a new trial for the reason that the verdict of the jury and the judgment rendered therein is [are] contrary to the law and the evidence.
Premises considered, defendant prays that said verdict and judgment may be set aside and a new trial or rehearing granted & further prays for all orders and decrees necessary in the premises, and general & special relief.

(Sig.) FRANK B. STUBBS,
(") WISE & HERNDON,
Att'ys for Def't Co.

Endorsed: No. 80. U. S. circuit court, western dist. of La. R. N. Smith *et al. vs.* Geo. A. Turner. Motion for a new trial. Filed Aug. 2, '86. (Sig.) J. W. Wheaton, cl'k.

Minutes of U. S. Circuit Court.

WEDNESDAY, *August 4th*, 1886.

Court met pursuant to adjournment.
Present: His honor Aleck Boarman, district judge, presiding.

R. N. SMITH ET AL.
vs.
GEO. A. TURNER. } No. 80.

Motion for a new trial in this case overruled.

Judgment.

U. S. Circuit Court, 5th Circuit, Western District Louisiana.

ROBERT N. SMITH ET AL.
vs.
GEO. A. TURNER & THE VICKSBURG, SHREVEPORT & PACIFIC RAILROAD CO. } No. 80.

In this case, by reason of the law and the evidence & the verdict of the jury being in favor of the plaintiffs and against the defendants, it is ordered, adjudged, and decreed that the plaintiffs, Robert N. Smith, Elizabeth A. Smith, wife of Marine Duvall; Elizabeth W. Smith, William L. Smith, and John S. Smith, be and they are hereby declared to be owners of the land in controversy and entitled to the possession of same, said lands being known and described as follows, viz: Commencing at rock on range line between townships thirteen and fourteen and traverse of Silver Lake, thence south 59½ east twenty-one $\frac{25}{100}$ chains; thence north 45 east one thousand feet; thence north 10° east two hundred and eight feet to point of beginning of land in possession of defendant, George A. Turner; thence same course five hundred & seventy feet to a willow tree thirty-two inches in diameter; thence north 23° east five hundred and fifteen feet; thence north 68° 40′ west four hundred & fifty-three feet; thence south 36° 40′ west two hundred and ninety-seven feet; thence from willow corner south 80° 35′ west two hun-
136–81 dred feet; thence south 55° 20′ west three hundred & nine feet; thence south 31° 40′ east four hundred & twenty-five feet; thence north 33° 40′ west five hundred feet; thence north 55° 15′ east four hundred & eighty feet; thence north 85° east three hundred and sixty-four feet; thence north 73° 20′ east two hundred & twenty feet; thence north 64° 3′ east three hundred & thirty-five —; thence north 30½° east one hundred and ninety feet; thence

north 0° 35′ east six hundred & fifty-two feet; thence along bank of Red river eleven hundred & sixty-five feet to a point on east line of the ditch at its junction with Red river; thence south 19° 45′ west six hundred feet; thence north 70½ west one hundred & twenty feet to the willow tree aforesaid, containing thirty-five $\frac{18}{100}$ acres, situated in the parish of Caddo, Louisiana, and as shown and described on map & survey of same made by W. R. Devoe, civil engineer, on file and of record in said cause.

It is further ordered that writs of possession issue in favor of plaintiffs & against defendants; and it is further ordered and decreed that plaintiffs have judgment against defendants for costs. It is further ordered and decreed that plea of *res adjudicata* be overruled.

Done, read, and signed in open court on this Aug't 4th, A. D. 1886.

(Sig.) ALECK BOARMAN, *Judge.*

(Endorsed:) 80. R. N. Smith *et al. vs.* Geo. A. Turner *et al.* Judgment. Filed Aug. 4, '86. (Sig.) J. W. Wheaton, cl'k.

R. N. Smith et al.
vs.
Geo. A. Turner. } No. 80.

Motion for a writ of *of* error to Supreme Court filed, & bond for a devolutive and suspensive appeal *be* fixed in the sum of fifteen hundred dollars.

Petition for a Writ of Error to Supreme Court of U. S.

United States of America,
5th Circuit, Western Dist. of La.

To the hon. justices of the Supreme Court of the United States:

And now comes the Vicksburg, Shreveport & Pacific Railroad Company and complains that in the records and proceedings, and also in the verdict and rendition of judgment thereon, in a suit between Robert N. Smith *et als. vs.* Geo. A. Turner, in which suit the Vicksburg, Shreveport & Pacific Railroad Company is the substituted and real defendant, tried in the circuit court of the United States for said western district of Louisiana, at the term of court thereof held on the 31st day of July, A. D. 1886, and in which judgment was rendered against the said defendant railroad
136–82 company on said 31st day of July, A. D. 1886, a manifest error hath happened, to the great damage of the said defendant railroad company.

Wherefore they pray for the allowance of a writ of error and such other process as may cause the same to be corrected by the Supreme

Court as aforesaid allowed, & further pray for all orders and decrees necessary in the premises, and general and special relief.

(Sig.) FRANK B. STUBBS,
" WISE & HERNDON,
Att'ys for Vicksburg, Shreveport & Pacific Railroad Company.

Allowed.
(Sig.) ALECK BOARMAN, *Judge.*

Endorsed: 80. U. S. circuit court, western district of Louisiana. Robert N. Smith *et als. vs.* Geo. A. Turner. Petition for a writ of error to Supreme Court of U. S. Filed Aug. 4, '86. (Sig.) J. W. Wheaton, cl'k.

R. N. SMITH ET AL.
vs.
GEO. A. TURNER. } No. 80.

6 bills of exceptions filed.

Bills of Exception # 1.

In U. S. Circuit Court for the Western District of Louisiana.

ROBERT N. SMITH ET ALS.
vs.
GEO. A. TURNER. } No. —.

Be it remembered that on the 29th day of July, 1886, when this case was called for trial, and which had just at that time been put at issue, the plaintiffs announced ready for trial and the defendant, The Vicksburg, Shreveport & Pacific Railroad Company, announced not ready and moved for a continuance to the next term of the court, supported by an affidavit, which is annexed and made part hereof; in which affidavit the names of the witnesses and the facts to be proved by them is [are] fully set forth. The said application for continuance was overruled and disallowed and the defendant forced to trial by the court because the plaintiff's counsel admitted, for the purposes of this trial, that if the persons mentioned in the motion for continuance were present they would swear to the matters stated in said motion, the plaintiffs reserving the right to make such objections to their testimony on such matters as are stated in said motion as the law would sustain; that if said testimony from said witnesses could be heard on the trial the court would hear it; otherwise not.

To which ruling defendant, by counsel, objected, and tenders this bill of exceptions, which is allowed and ordered
136–83 — be filed and made a part of this record.

Aug. 4, A. D. 1886.
(Sig.) ALECK BOARMAN, *Judge.*

Endorsed: No. 80. Robert N. Smith *et als. vs.* Geo. A. Turner. Bill of exceptions # 1. Filed Aug. 4, '86. (Sig.) J. W. Wheaton, cl'k.

Bills of Exceptions # 2.

In U. S. Circuit Court for the Western District of Louisiana.

ROBERT N. SMITH ET ALS.
vs.
GEO. A. TURNER. } No. —.

Be it remembered that on the trial of this case on the 29th day of July, 1886, the defendant, The Vicksburg, Shreveport & Pacific Railroad Company, by counsel, offered E. M. Smith, Thomas Phillips, E. Jacobs, as competent witnesses to prove that the land described and claimed by the plaintiffs in their petition under a certificate & patent from the State of Louisiana, and which is claimed by defendant under a grant from the United States Gov't to the State of La. to aid said railroad, and for which defendant prays judgment recognizing their ownership, &c., is worth the sum of ten thousand dollars; whereupon plaintiffs' counsel objected on the ground that the only part of said Silver Lake tract of 186 acres that was in controversey in this suit was the part alleged to be in the possession of the defendant Turner, and it was admitted by counsel for defendant that said part or parcel of land was not worth exceeding two thousand dollars.

The objection of the plaintiffs to the said evidence tendered by defendant was sustained by the court and the evidence or admission excluded for the following reasons, to wit:

The testimony of the above-named witnesses was not heard because the petition claims only the number of acres of land held by or in possession of Geo. Turner, the defendant; that the judgment in this case, if for plaintiff, could effect only the land held by Turner, and the claim set up by the defendant Turner or by the railway, whatever it may be, does not make this a suit for more than the number of acres of land claimed by the plaintiff, which is about forty acres, more or less, and is shown by admission of counsel not to be worth more than two thousand dollars.

If the suit involves title to the 186 acres of land, then the land to be passed on is worth about $10,000, as is admitted by counsel for plaintiff.

To which ruling defendant, by counsel, objected, and tenders this bill of exceptions, which is accordingly allowed and ordered filed & made part of the record of this case.

Aug. 4, 1886.

(Sig.) ALECK BOARMAN, *Judge.*

136–84 Endorsed: No. 80. Robert N. Smith *et als. vs.* Geo. A. Turner. # 2 bill of exceptions. Filed Aug. 4, '86. E. J. Nolan, d'y cl'k.

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Bills of Exceptions # 3.

In U. S. Circuit Court for the Western District of Louisiana.

ROBERT N. SMITH ET ALS.
vs.
GEO. A. TURNER. } No. 80.

Be it remembered that on the 31st day of July, after the evidence had all been submitted and after argument of counsel, the court came to charge the jury, and said:

The court charged that if the jury find that the land in question was, on the 28th Sept. 1850, swamp and overflowed or such land as came under the description of the act in which the grant was made to the State and had not then been sold by the United States it, follows that title vested in the State; that shallow, non-navigable, fresh-water lakes and ponds coming within the language of that act, were included in the grant; that the court would, by way of definition and illustration, say what the words used in the act mean, and it was for the jury to say whether the land in question is such land as is named in the act; that the character of the lands claimed by plaintiff to be swamp lands, such as are described in the act, can be shown by witnesses who have personal knowledge thereof; that such testimony is sufficient to show that the land sued for is or that it is not such land as is described in the act, 18495, of 1850.

It was shown, without any contradiction on the part of the defendant, that the land in question was surveyed in 1853 by the surveyor general of Louisiana; that W. W. Smith, the author of the plaintiffs' title, entered the said land, has a patent for it, and paid the State for it in 1853, after it was surveyed. These matters were not in any way disputed by defendant, and I charge you that the grant was a present grant, vesting title in the State; and if you find that the land comes within the language of the statute you will find for plaintiff. I charge you that nothing further was essential to make the title vest in the State; that in this case the failure to file in the General Land Office of the United States a list of the lands selected under the acts — 1849–'50 does not defeat plaintiffs' claim if you are satisfied from the evidence that the land is of such a character as the statute describes; that W. W. Smith having entered the land and paid the State for it in 1853, after it had been surveyed by the surveyor gen'l for Louisiana, it was not necessary in this case, to make his title good in law, for the Sec't'y of Interior to have done anything further, or for a list of the land in question to be filed in his office or in any of the departments.

To that charge and ruling defendant, by counsel, ob-
136–85 jected, and tenders this his bill of exception, and prays that the same may be allowed.

Aug. 4th, 1886.

(Sig.) ALECK BOARMAN, *Judge.*

Endorsed: No. 80. R. N. Smith *et al. vs.* Geo. A. Turner. Bill of exception # 3. Filed Aug. 4, '86. (Sig.) J. W. Wheaton, clerk.

Bills of Exceptions # 4.

In U. S. Circuit Court for the Western District of Louisiana.

ROBERT N. SMITH ET ALS.
vs.
GEO. A. TURNER. } No. 80.

Be it remembered, on the 4th day of August, 1886, when the counsel for pl'ffs herein had read the judgment in this case and offered it to the judge for his signature, the def'ts, by counsel, objected to the same being signed, for the reason that said judgment gives a minute description of a certain tract of land in the possession of Geo. A. Turner, when pl'ffs in their petition give no description of said land, nor does the map made by W. R. Devoe, surveyor, and filed in this suit give any such description of said land: which objection was overruled by the court for the follow [following] reasons, to which def't, by counsel, reserves this bill of exception and pray- that the same may be signed: Said objection was overruled because the map of the land in suit was made by W. R. Devoe, a surveyor, and filed in evidence, and the jury found in their verdict that the land to which plaintiff was entitled was in that survey and shown by the said map, which was received in evidence without objection Aug. 4, A. D. 1886; to which ruling by — counsel objected and tenders this bill of exceptions, which is accordingly allowed, ordered filed, & made part of the record of this case.

Aug. 4, A. D. 1886.

(Sig.) ALECK BOARMAN, *Judge.*

Endorsed: No. 80. R. N. Smith *et al. vs.* G. A. Turner. Bill of exception # 4. Filed Aug. 4, '86. (Sig.) J. W. Wheaton, cl'k.

Bills of Exceptions # 5.

In U. S. Circuit Court for the Western District of Louisiana.

R. W. SMITH ET ALS.
vs.
GEO. A. TURNER. } No. —.

Be it remembered that on the trial of this case, on the 29th of July, 1886, the defendant, The Vicksburg, Shreveport &
136–86 Pacific Railroad Company, by counsel, offered to read to the court and jury and file as evidence material and com-

petent in defence all the evidence that was taken & used on trial of this case of The State of Louisiana *vs.* W. W. Smith, No. — on the district court docket, parish of Caddo, State of Louisiana, which is annexed hereto; to the introduction of which plaintiffs, by their counsel, objected, and objections sustained and the evidence excluded upon the following grounds, to wit:

Among the evidence that was offered by defendants in said case is the testimony of T. P. Hotchkiss, which, not being objected to, went to the jury by consent of counsel. The remaining evidence was excluded by the court because, as to the plaintiff's, it was *res inter alios acta*, and it was not shown that the witnesses were either dead or other use [otherwise] disqualified.

To which ruling defendant, by counsel, objected and tenders this bill of exceptions, which is accordingly allowed and ordered filed & made a part of the record of this case.

Aug. 4, A. D. 1886.

(Sig.) ALECK BOARMAN, *Judge.*

Endorsed: No. 80. Robert N. Smith *et als. vs.* Geo. A. Turner. Bill of exceptions # 5. Filed Aug. 5, '86. (Sig.) J. W. Wheaton, cl'k.

Bills of Exceptions # 6.

In U. S. Circuit Court for the Western District of Louisiana.

ROBERT N. SMITH ET ALS.
vs.
GEO. A. TURNER. } No. 80.

Be it remembered that on the 4th day of August, 1886, while this case was pending on an application for a new trial or rehearing, the defendant, The Vicksburg, Shreveport & Pacific Railroad Company, by counsel, entered a plea of prescription of ten years and asked that it by filed. Pl'ffs, by their counsel, objected, which was sustained by the court for the following reasons, to wit; to which ruling def't, by counsel, reserves this bill of exceptions, and prays that the same may be —.

The plaintiffs' counsel objected to the filing of the plea, and objection was sustained because, — the suit had been sued and a verdict returned by the jury, the plea came too late.

Aug. 4, 1886.

(Sig.) ALECK BOARMAN, *Judge.*

Endorsed: No. 80. R. N. Smith *et als. vs.* G. A. Turner. # 6. Filed Aug. 4, '86. (Sig.) J. W. Wheaton, clerk.

136–87 *Extracts of Minutes of U. S. Circuit Court.*

FRIDAY, *August 6th*, 1886.

Court met pursuant to adjournment.
Present: His honor Aleck Boarman, district judge, presiding.

R. N. SMITH ET ALS. vs. GEO. A. TURNER. } No. 80.

(On account of errors, see to-morrow's minutes.)

Ordered, that the court do now adjourn until to-morrow morning, Saturday, August 7th, 1886, at 10 a. m.

SATURDAY, *August 7th*, 1886.

Court met pursuant to adjournment, his honor Aleck Boarman, district judge, presiding.

R. N. SMITH ET ALS. vs. GEO. A. TURNER. } No. 80.

Plea of prescription filed. Bond for writ of error filed.
Ordered, that the court do now adjourn until the next regular term.

Plea of Prescription.

In U. S. Circuit Court for the Western District of Louisiana.

ROBERT N. SMITH ET ALS. vs. GEO. A. TURNER. } No. 80.

Now comes the real defendant herein, The Vicksburg, Shreveport & Pacific Railroad Company, by counsel, and pleads the prescription of ten years — pl'f't' right to recover, and aver- that thev [it] have [has] been in the un-terrupted adverse possession of said lands described in the answer to the merits of this case by title translative of property for more than ten years.

Wherefore this company prays that this plea of prescription may be sustained and there be judgment thereon in their [its] favor, & further pray- for all orders and decrees necessary, and general relief.

(Sig.) FRANK B. STUBBS &
" WISE & HERNDON,
Att'ys for R. R. Co.

Endorsed: No. 80. U. S. circuit court. R. N. Smith *et als.* vs. Geo. A. Turner. Plea of prescription. Filed August 7th, 1886. E. J. Nolan, d'y cl'k.

136–88 *Bond for Writ of Error.*

Know all men by these presents that we, The Vicksburg, Shreveport and Pacific Railroad Company, as principal, and Sandford B. McCutchen, as surety, is [are] held and firmly bound unto John W. Wheaton, clerk of the United States circuit court for the western district of Louisiana, in the full sum of fifteen hundred dollars, to be paid to the said John W. Wheaton, clerk of the said 5th circuit court, — certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this seventh day of August, in the year of our Lord one thousand eight hundred and eighty-sixth.

Whereas lately, at a circuit court of the United States, fifth judicial circuit, holding sessions in and for the western district of Louisiana, in a suit depending in said circuit court, wherein Robert N. Smith *et als.* — plaintiff- and Geo. A. Turner nominal & Vicksburg, Shreveport & Pacific Railroad Company real defendants, judgment was rendered against The Vicksburg, Shreveport & Pacific Railroad Company, defendant; and the said Vicksburg, Shreveport & Pacific Railroad Company having obtained a writ of error and filed a copy thereof in the clerk's office of the said circuit court to reverse the judgment in the aforesaid suit, and a citation directed to the said Robert N. Smith *et als.*, citing and admonishing them to be and appear at the Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such that if the said Vicksburg, Shreveport & Pacific railroad shall prosecute this writ to effect and answer all damages and cost- if they fail to make this plea good, then the above obligation to be void; else to remain in full force and virtue.

(Sig.) VICKSBURG, SHREVEPORT & PACIFIC RAILROAD COMPANY, [L. S.]

(Sig.) Per WISE & HERNDON, [L. S.]
Att'ys-at-Law for said Co.

(Sig.) S. B. McCUTCHEN. [L. S.]

Sealed and delivered in the presence of—

—— ——.

Approved.

(Sig.) ALECK BOARMAN, *Judge.*

UNITED STATES OF AMERICA,
District of Louisiana.

Personally appeared Sanford B. McCutchen, who, being duly sworn, deposes and says that he is the surety on the within bond; that he resides in the parish of Caddo, in the State of Louisiana, and is worth the full sum of fifteen hundred dollars over and *and* above all his debts and liabilities and property exempt from execution.

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(Sig.) S. B. McCUTCHEN.

Subscribed and sworn before me this 7th day of August, 1886.

(Sig.) J. W. WHEATON.
Clerk & Commissioner U. S. Circuit Court,
District of Louisiana.

Endorsed: No. 80. United States circuit court, district of Louisiana. R. N. Smith *et als. vs.* Geo. A. Turner. Bond for writ of error. Filed August 7th, 1886. E. J. Nolan, d'y clerk.

Circuit Court of the United States, Fifth Circuit and Western District of Louisiana.

CLERK'S OFFICE.

I, John W. Wheaton, clerk of the circuit court of the United States for the fifth circuit and western district of Louisiana, do hereby certify that the foregoing 201 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced, on the trial in the case of R. N. Smith *et als. versus* Geo. A. Turner *et als.*, No. 80 of the docket of the said court.

Seal U. S. Circuit Court for the Western Dist. of La.

Witness my hand and the seal of said court this 20th day of September, A. D. 1886.

J. W. WHEATON, *Clerk.*

I, Aleck Boarman, United States judge for the western district of Louisiana, do certify that John W. Wheaton, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and western district of Louisiana, was at the time of signing said certificate and is now the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of Shreveport, this 20th day of September, A. D. 1886.

ALECK BOARMAN, *Judge.*

I, John W. Wheaton, clerk of the circuit court of the United States for the fifth circuit and western district of Louisiana, do hereby certify that Aleck Boarman, whose name is signed to the foregoing certificate as United States judge for the western district of Louisiana, was at the time of signing said certificate and is now the judge of said court.

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Seal U. S. Circuit Court for the Western Dist. of La.

Witness my hand and the seal of said court, at the city of Shreveport, this 20th day of September, A. D. 1886.

J. W. WHEATON, *Clerk.*

UNITED STATES OF AMERICA:

The President of the United States of America to the honorable the judge of the circuit court of the United States for the western district of the State of Louisiana, Greeting:

Because that in the records and process and also in the rendering of judgment in a suit before you or some of you, between The Vicksburg, Shreveport & Pacific Railroad Company, a public corporation domiciled at Monroe, Louisiana, and citizen thereof, plaintiff in error, being substituted by the order of court for George A. Turner, original defendant in said suit, and Robert N. Smith, Elizabeth A. Smith, wife of Marine Duvall; Elizabeth W. Smith, and William L. Smith, citizens of Shelby county, in the State of Kentucky, and John S. Smith, a citizen of the State of Colorado, defendants in error, a manifest error has intervened, to the great damage of the said plaintiff in error, as in its complaint has been stated, and it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded that, if judgment thereof be given, then, under your seal, you do distinctly and openly send the record and process in the suit aforesaid, same being No. 80 on the docket of said circuit court, with all things concerning them, and this writ, so that you have the same before the Chief Justice and the associate justices of the Supreme Court of the United States on the second Monday of October next at Washington, being the present seat of the National Government, that, the records and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the honorable Chief Justice of the said Supreme Court, at Washington, aforesaid, this twentieth day of September, in the year of our Lord one thousand eight hundred and eighty-six, and of the Independence of the United States one hundred and tenth.

[Seal U. S. Circuit Court for the Western Dist. of La.]

J. W. WHEATON, *Clerk.*

[Endorsed:] No. 80. Vicksburg, Shreveport & Pacific R. R. Co. vs. Robert N. Smith, Elizabeth A. Smith, wife of Marine Duvall; Elizabeth W. Smith, William L. Smith, John S. Smith. Writ of error. Filed Sept. 20th, '86. E. J. Nolan, d'y clerk.

United States of America to Robert N. Smith, Elizabeth A. Smith, wife of Marine Duvall, and Marine Duvall, to join and assist his said wife; Elizabeth W. Smith, William L. Smith, and John S. Smith, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washing-
136-91 ton on the second Monday in October next, persuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and for the western district of Louisiana, wherein The Vicksburg, Shreveport & Pacific Railroad Company is plaintiff and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the honorable the judge of the western district of the State of Louisiana this 28th day of September, in the year of our Lord one thousand eight hundred and eighty-six (1886).

ALECK BOARMAN, *Judge.*

[Endorsed:] No. 80. U. S. circuit court, 5th circuit, western district of Louisiana. Robert N. Smith *et als. vs.* Vicksburg, Shreveport & Pacific Railroad Company. Citation. Filed Oct. 1st, 1886. E. J. Nolan, d'y cl'k.

Rec'd a true and certified copy of within citation on this the 2nd day of Oct., A. D. 1886, and on same day served same on Land and Land, att'ys-at-law, at Shreveport, La., by handing to Alfred D. Land in person, a member of said firm, at his office, in said city.

J. C. JONES,
D'y Marshal.

Sworn to and subscribed before me this 2nd day of October, A. D. 1886.

[Seal U. S. Circuit Court for the Western Dist. of La.]

E. J. NOLAN, *D'y Clerk.*

Know all men by these presents that we, Frank S. Bond, as president of the Vicksburg, Shreveport & Pacific Railroad Company, as principal, and Sanford B. McCutchen, as surety, are held and firmly bound unto Robert N. Smith, Elizabeth A. Smith, wife of Marine Duvall; Elizabeth W. Smith, William L. Smith, and John S. Smith in the full and just sum of fifteen hundred dollars, to be paid to the

said Robert N. Smith, Elizabeth A. Smith, wife of Marine Duvall; Elizabeth W. Smith, William L. Smith, and John S. Smith, their attorneys, executors, administrators, or assigns, jointly and severally, by these presents.

Sealed with our seals and dated this twenty-third day of September, in the year of our Lord one thousand eight hundred and eighty-six.

Whereas lately, at a session of the circuit court of the United States, fifth judicial circuit, holding sessions in and for the western district of Louisiana, in a suit depending in said circuit court wherein Robert N. Smith, Elizabeth A. Smith, wife of Marine Duvall, joined and assisted by her said husband; Elizabeth W. Smith, William L. Smith, and John S. Smith are plaintiffs and The Vicksburg, Shreveport & Pacific Railroad Company is defendant, substituted by order of court for George A. Turner, original de-
136–92 fendant, being No. 80 on docket of said circuit court, judgment was rendered against the said Vicksburg, Shreveport & Pacific Railroad Company, defendant; and the said Vicksburg, Shreveport & Pacific Railroad Company having obtained a writ of error and filed a copy thereof in the clerk's office of the said circuit court to reverse the judgment in the aforesaid suit, and a citation directed to the said Robert N. Smith, Elizabeth A. Smith, wife of Marine Duvall, and said Marine Duvall to join and assist his said wife; Elizabeth W. Smith, William L. Smith, and John S. Smith, citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday in October next:

Now, the condition of the above obligation is such that if the said Vicksburg, Shreveport & Pacific Railroad Company shall prosecute its said writ of error to effect and answer all damages and costs if it fails to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

(Sig.) FRANK S. BOND,
President of the Vicksburg, Shreveport & Pacific, Railroad Company.
By WISE & HERNDON, *Att'ys.* [L. S.]
S. B. McCUTCHEN. [L. S.]

Approved.
(Sig.) ALECK BOARMAN, *U. S. Judge.*

[Endorsed:] No. 80. U. S. circuit court, 5th circuit, western district of Louisiana. Robert N. Smith *et als. vs.* Vicksburg, Shreveport & Pacific Railroad Company. Bond. Filed Oct. 1, '86. E. J. Nolan, d'y cl'k.

Personally appeared Sanford B. McCutchen, who, being duly sworn, deposes and says that he is surety on the foregoing bond; that he resides in Caddo parish, in the western district of Louisiana,

and is worth the full sum of fifteen hundred dollars over and above all his debts, liabilities, and exemptions.

S. B. McCUTCHEN.

Sworn to & subscribed before me this 23d day of September, A. D. 1886.

[Seal U. S. Commissioner, Western District La.]

J. B. SLATTERY,
U. S. Commissioner.

Endorsed on cover: W. Louisiana C. C. U. S. No. 276. The Vicksburg, Shreveport & Pacific Railroad Company, plaintiff in error, *vs.* Robert N. Smith, Elizabeth A. Smith, wife of Marine Duvall; Elizabeth W. Smith, William L. Smith, and John S. Smith. Filed December 13, 1886.

136–93 "B."

Filed in evidence in 5231 Feb'y 23 1903

J. H. LEVY, *D'y Clerk.*

137 *Continuance.*

NEW ORLEANS, TUESDAY, *December* 15, 1903.

The court was duly opened, pursuant to adjournment.

Present: Their honors Francis T. Nicholls, chief justice; Joseph A. Breaux, Frank A. Monroe, Olivier O. Provosty, Alfred D. Land, associate justices.

VICKSBURG, SHREVEPORT & PACIFIC R. R. Co. *vs.* ALBERT TIBBS ET ALS. } No. 14865.

This case was ordered by the court to be continued until tomorrow, Wednesday, the 16th day of December, instant.

Called and Continued by Preference.

NEW ORLEANS, WEDNESDAY, *December* 16, 1903.

The court was duly opened, pursuant to adjournment.

Present: Their honors Francis T. Nicholls, chief justice; Joseph A. Breaux, Frank A. Monroe, Olivier O. Provosty, Alfred D. Land, associate justices.

VICKSBURG, SHREVEPORT & PACIFIC R. R. Co. *vs.* ALBERT TIBBS ET ALS. } No. 14865.

This cause came on this day to be heard whereupon on motion of counsel for the respective parties, the court ordered the same to be continued with preference.

(Land J., recused.)

138 *Continuance.*

NEW ORLEANS, WEDNESDAY, *January* 20, 1904.

The court was duly opened, pursuant to adjournment.

Present: Their honors Francis T. Nicholls, chief justice, Joseph A. Breaux, Frank A. Monroe, Olivier O. Provosty, associate justices. Absent: Alfred D. Land, associate justice.

VICKSBURG, SHREVEPORT & PACIFIC R. R. Co. *vs.* ALBERT TIBBS ET ALS. } No. 14865.

This case was ordered by the court to be continued until tomorrow, Thursday, the 21st instant.

Cause Submitted.

NEW ORLEANS, THURSDAY, *January* 21*st*, 1904.

The court was duly opened, pursuant to adjournment.

Present: Their honors Francis T. Nicholls, chief justice, Joseph A. Breaux, Frank A. Monroe, Olivier O. Provosty, Alfred D. Land, associate justices.

VICKSBURG, SHREVEPORT & PACIFIC R. R. Co. *vs.* ALBERT TIBBS ET ALS. } No. 14865.

This cause came on this day to be heard, whereupon Mr. Justice Land, recused himself. And having heard argument from counsel: Mr. Francis Peter Stubbs, and Mr. William Henry Wise, for the plaintiff and appellee; Mr. Albert H. Leonard, Mr. William Pike Hall and Mr. Edgar Williamson Sutherlin, on behalf of the defendants, appellants, the court took the cause under advisement upon the briefs for the respective parties and the papers now on file.

139 MONDAY, *February* 15*th*, 1904.

Mr. Justice MONROE:

VICKSBURG, SHREVEPORT & PACIFIC RAIL ROAD COMpany *vs.* ALBERT TIBBS ET AL., HEIRS OF W. W. SMITH ET ALS., Substituted. } No. 14865.

Appeal from the first district court, parish of Caddo, J. T. Watkins, judge *ad hoc*.

Statement.

This is a petitory action for the recovery of a tract of land in the parish of Caddo, described as lots 1, 2, 3, 4, 5, 6, 7, 8, and 9, in S. 31,

T. 18, R. 13, containing 179.80 acres, less 35.18 acres, not included in the demand. The original defendants disclaim title and allege that they are in possession as tenants of A. H. Leonard, G. R. Wilson and the heirs of W. W. Smith, who, assuming the defence, by way of exception, plead *res judicata* and estoppel, and, for answer, set up title in themselves, by patent, to their author, from the State of Louisiana, and by confirmation of title from the United States. After this suit was instituted, the plaintiff company was put into the hands of a receiver, the land in controversy was adjudicated to C. C. Harvey, and the receiver and Harvey made themselves parties and have set up a counter plea of *res judicata*. The plaintiff makes a claim for rents and revenues, and the defendants, in the event of their ejectment, for re-imbursement of taxes paid, but those claims have, by consent, been reserved for future adjustment.

The land in question has been known as Silver Lake, and, in 1839, when the township in which it is situated was sur-
140 veyed, was covered with water. It was not, however, selected by, and approved to, the State as swamp, or overflowed, land, under the acts of Congress of 1849 and 1850; but, upon the passage, by the General Assembly, of act No. 284 of 1853, authorizing the register of the land office to sell, subject to the conditions provided in the act, certain "shallow lakes," that officer, on May 14th, 1853, sold it to W. W. Smith, to whom, in February, 1855, he issued a patent. In December, 1857, the State brought suit, in the district court for the parish of Caddo, to annul the sale so made, on the grounds, that the act authorizing it had not, then, been promulgated and the land had not been surveyed as thereby required, and, from a judgment maintaining an exception filed by Smith and dismissing the suit, the State appealed to this court, where said judgment was reversed and the case remanded. The defendant W. W. Smith, then, died, and his administrator, J. W. Smith, set up the title upon which the defendants now before the court rely, and, after trial upon the merits, there was judgment in favor of the State, decreeing "that the certificate of entry of * * * Silver Lake * * * in favor of W. W. Smith be annulled, avoided and delivered up * * *, and that the patent issued * * * for Silver Lake be annulled and now taken up." From this judgment, the defendant appealed to this court, and upon August 11, 1869, the appeal was dismissed, by consent of counsel. In the meanwhile, that is to say, by act 228, of 1853, the General Assembly had chartered a company to build a railroad from the Texas line, *via* Greenwood, Shreveport and Monroe, to a point on the Mississippi river opposite Vicksburg, and, upon June 3rd, 1856, the President of the United States had approved an act of Congress granting to the State of Louisiana, for the purpose of aiding in the construction of said road, every alternate section of land, for six sections in width, on each side of its proposed line, subject to the condition that the land so granted should be used
141 for no other purpose and should be disposed of only as the governor of the State should certify to the progress and com-

pletion of the work. It is shown that the land here in question fell within the limits of the grant thus made, that, immediately upon the passage of the act, and before it was signed, the Secretary of the Interior ordered that it should be withdrawn from the market, and that thereafter, a number of applications for its purchase, for homestead purposes, or otherwise, were refused, on the ground that it was included in the grant to the railroad company. In the last of these rulings, made in March 1881, the Secretary of the Interior concludes by saying: "The foregoing decisions touching the land in question, as abated, have all the force and effect of *stare decisis*, consequently, the adjustment of the grant in 1874, in ascertainment of the right of the State, under act of July 14, 1870 (16 Stat. 277), declaring a partial forfeiture, and the re-approval of the lists containing these particular lands as a part of said grant, earned by the company, must be considered as a final adjustment of the subject matter, which exhausted the power and jurisdiction of the department."

In 1885, R. N. Smith and others brought suit, in the circuit court of the United States, alleging that they had inherited Silver Lake from W. W. Smith and that about 40 acres of it was unlawfully withheld from them by George A. Turner, and praying judgment for the land so withheld. Turner disclaimed title and the railroad Co. (present plaintiff) assumed the defence, and, upon the trial, offered to prove the value of the entire tract. The evidence offered for that purpose was, however, excluded, upon the objection of the plaintiffs that there was nothing in controversy except the title to so much of the tract as was occupied by Turner and claimed by
142 them, and there was judgment for plaintiffs for 35.18 acres of land, found to be occupied by Turner. The judgment so rendered was taken by writ of error to the Supreme Court of the United States where the plaintiffs (defendants in error) moved to dismiss on the ground that the court was without jurisdiction, for the reason that the value in dispute was that of the particular parcel of land occupied by Turner and not that of the entire Silver Lake tract, and the court, adopting that view, dismissed the writ, saying:

"All that the plaintiffs, in their petition, claimed to recover was the part of the land which was in the possession of Turner, alleged therein to contain forty acres, or more. The answer alleged that the land sought to be recovered in the suit was worth, at least, $10,000.00, and prayed that the plaintiffs' demand be rejected and for judgment decreeing the company "to be the owner of the land." This put in issue only the land in the possession of Turner. The judgment is limited to a piece of land, described by metes and bounds and containing 35.18 acres, as shown by a map and survey of the same on file and of record in the cause. The value of that parcel of land is shown clearly to be not over $2000 and this is conclusive as to our jurisdiction * * * Writ of error dismissed."

V. S. & P. R. R. Co. *vs.* Smith 135 U. S. 195.

In 1888, the heirs of Smith brought another suit, alleging that they had obtained judgment against Turner for 35.18 acres of the Silver Lake tract, that Jack Ford and others, whom they named, were in possession of the remainder of the tract, and praying judgment against them therefor. The parties made defendant filed a general denial, setting up no title in themselves and not disclosing the name of the owner; the railroad company made no appearance; and there was judgment for plaintiffs under which they were put in possession of the property claimed.

143 *Opinion.*

Dealing with the pleas of *res judicata* and estoppel, as predicated by the defendants upon the judgment in the Turner case, it will be observed that, by an interlocutory ruling, sustaining an objection urged by them, the judge of the circuit court held that the issue before the court in that case concerned only the title to the particular parcel of land occupied by Turner and that the title to the remainder of Silver Lake tract was not involved; and it will, also, be observed that, in the Supreme Court of the United States, the defendants asked for and obtained the same ruling, and that the final judgment of that august tribunal decides no other question than that the title to the property here in dispute was not there at issue. Under these circumstances, we are unable to follow the reasoning by which the defendants endeavor to show that the judgment in the Turner case constitutes *res judicata* with respect to that title, since, whatever force there may be in the general proposition that a judgment as to the ownership of a portion of a tract of land is conclusive between the same parties, claiming under the same titles, as to the ownership of the whole tract, the fact remains, that the final judgment in any particular case is the law of that case, and that the thing adjudged in, and hence, the law of, the Turner case is precisely the reverse of that for which the defendants contend.

And so, with regard to the question of estoppel. The proposition advanced in the Turner case,—that the title to the whole Silver Lake tract was then at stake—having been decided adversely to its contention, the present plaintiff is now entitled to whatever advantage is to be derived from that ruling, whilst the present defendants, whose position was, there, sustained, must now take the consequences and cannot be heard, here, to assert what they, there, denied.

144 In the suit against Ford and others, the defendants were without capacity to litigate the title and did not pretend to do so; hence, nothing but the right of possession could have been determined. Young *vs.* Chamberlain 15 Ann. 454.

Considering the plea of *res judicata*, predicated by the plaintiff, on the judgment in the case of State *vs.* Smith, it appears that the State there alleged that the register of the land office had assumed to sell the Silver Lake tract under the authority of the act approved

April 30th, 1853, (being act No. 284 of the session of that year), which made special provision for the sale of "shallow lakes," as contradistinguished from swamp, and overflowed, lands, and further alleged that said sale was made before the act was promulgated and in disregard of its provisions. Smith, the author of the present defendants, was cited and filed certain exceptions, which were maintained, and, after his death, his administrator was made a party defendant and filed an answer upon which the case was tried upon its merits, with the result, that there was judgment for the State, annulling the title set up by Smith (being the identical title here set up by his heirs and their transferrees). From the judgment so rendered, the administrator appealed to this court and, in 1869, the appeal was dismissed, by consent of counsel.

It is said by the learned counsel for the defendants that the judgment so rendered does not constitute *res judicata*, (1) because the administrator had no capacity to stand in judgment with respect to the title to immovable property, and (2) because the administrator was dead when the appeal was dismissed, and, hence, that the appeal is still pending. The answer is, (1) that the administrator had the capacity to stand in judgment in the case presented (Pauline *vs.* Hubert 14 Annl. 161; Woodward *vs.* Thomas *et al.* 38 Annl. 238, and (2) that the appeal, having been dismissed by this court,
145 is no longer pending here, and the judgment dismissing it is not open to collateral attack (Dupre *vs.* Reggio 6 La. 635; Ludeling *vs.* Chaffe 40 Annl. 649; Cooper *vs.* Reynolds 10 Wallace 308; Colt *vs.* Colt 111 U. S. 578; Simmons *vs.* Saul 135 U. S. 439). It by no means follows, because the administrator was discharged after the appeal had been taken, that the counsel with whose consent it was dismissed was not properly authorized, and the presumption that he was so authorized is not weakened by the fact that, during the thirty five years which have elapsed since then, no suggestion to the contrary has been made. We therefore, conclude that the plea of *res judicata*, as set up by the plaintiff, is good.

This conclusion disposes of the contention that W. W. Smith bought the land in question as swamp, or overflowed, land, since, the State, in the suit just referred to, distinctly alleged that it was not so sold and its position was sustained by the judgment therein rendered. But if it had been sold as land acquired under the acts of Congress of the — 1849 and 1850 the result would be the same, since it belonged to that class of land which, under the act (of the General Assembly) No. 247 of 1855, could only have been sold after having been surveyed, and one of the causes of action set up, by the State in its suit against Smith, and maintained by the judgment therein rendered, was, that it had not been surveyed.

Finally, it is argued, that, under the acts of Congress of 1849 and 1850, title, *in præsenti*, to all swamp and overflowed lands within its limits vested in the State of Louisiana without regard to selection or approval, that the land in question was of that character and that the State acquired it under those acts, and, hence, that the United

States could not have granted, and the State (or the railroad company) could not have acquired, it, under the act of June 3, 1856.

The acts of 1849 and 1850 were, clearly, not intended to
146 operate against the will of the State. Upon the contrary, they distinctly left it to the State to select, subject to the approval of the Secretary of the Interior, the lands which it might consider within the terms of the grant. Whether the State might have selected the tract in question and whether such selection might, or would, have been approved need not be here considered. In point of fact, not only was the selection not made and the approval not given, but the grantor and the grantee concurred in the view that the tract fell within the terms of the act of 1856 and was granted to, and acquired by, the State of Louisiana, as the trustee of the V., S. & T. R. Co, for the purpose of aiding in the construction of the railroad which that company was to build. The situation thus presented was considered by the Supreme Court of the United States, in 1896, in a case in which the jurisprudence of the court was carefully reviewed and the following propositions established (quoting from the syllabus):

"1. The swamp land act of 1850 gave an inchoate title to the State, but the identification of the lands by the Secretary of the Interior was necessary before the title became perfect or the State was entitled to a patent which vested the fee simple title.

2. The certificate of the Secretary of the Interior, in 1858, that certain lands inured to the State, under the railroad act of 1856, was a decision that they were not embraced by the swamp land act of 1850.

3. The acceptance, by the State, of lands certified to it by the Secretary of the Interior, as included in the railroad grant of 1856, is conclusive upon the State, and upon a county therein and upon persons deriving their rights from the county, against a claim to the lands under the swamp land act of 1850, where no patent had been issued or identification of those lands made by the Secretary of the Interior, under the latter act.

147 4. A contract with a county for swamp and overflowed lands gives no better right than the county had to the lands which had been previously certified to the State by the Secretary of the Interior as included in a railroad grant." Rogers Locomotive Machine Works *vs.* American Emigrant Co., 164 U. S. 359.

Apart from the defences which have been thus considered, there appears to be no objection to the plaintiffs' title, as acquired under the act of Congress of June 3rd, 1856, and by purchase, under foreclosure of mortgage against the original grantee, and, as to other parties, and other lands similarly acquired, it has more than once been affirmed by this court. Railroad Co. *vs.* Sledge 41 Annl. 896; Mower *vs.* Kemp 42 Annl. 1007; State *vs.* Railroad Co. 44 Annl. 981; Railroad Co. *vs.* Elmore *et als.* 46 Annl. 1237.

It is, therefore, ordered, adjudged and decreed that the judgment appealed from be affirmed at the cost of the appellant.

Land, J., recused.

148 *Petition for Rehearing.*

In Supreme Court of Louisiana.

THE VICKSBURG, SHREVEPORT & PACIFIC RAILROAD Company
vs.
ALBERT TIBBS ET ALS. } No. 14865.

The petition of the defendants with respect represents that a re-hearing should be granted in this case for the reason that the court erred, as they believed.

1st. In overruling the objection of defendants to all evidence offered by the plaintiff in support of its title, on the ground that the judgment in the case of The Smith Heirs *vs.* Turner, No. 80 in the United States circuit court was *res judicata* and an estoppel of all the issues raised by the pleadings in this suit and no evidence could be heard upon the same.

2nd. In overruling the plea of *res judicata* and especially in overruling the plea of *res judicata* set up in the answers of the defendants as to all *issues raised* by the pleadings in this case based upon said suit verdict and judgment in said suit No. 80 in said United States court for the reason that the issues raised and points decided in that case were precisily the same as these made in this case and said verdict and judgment are *res judicata* as to all of said issues and a bar and estoppel against any controversy over said issues in this suit although a different price of land is before the court in this case but claimed under the same titles and on the same grounds contested and decided against the plaintiff in the aforesaid suit.

Petitioners contend that while said judgment would not have been *res judicata* as against any real titles or real issues that
149 might have been set up by the parties to this suit, that it is *res judicata* as to any not new and there being no new titles set up or issues raised by within party, but only issues already settled, that plea as to these, should be sustained and plaintiffs' suit dismissed.

The holding by the Supreme Court of the United States that the thing of value before the court which gave or withheld jurisdiction was only the thirty five acres claimed in that suit, did not under the verdict and judgment rendered in that case any less *res judicata* as to the *issues raised* and *determined* in that case than if the case had not been appealed at all. The defendants annexed a printed statement of all the points and authorities on which they rely.

Wherefore they pray that a re-hearing may be granted and for general relief.

(Signed) W. P. HALL, *Of Counsel.*

(Endorsed:) No. 14865. V. S. & P. Ry. Co. *vs.* Albert Tibbs, *et als.* Smith Heirs & Leonard substituted. Petition for rehearing. Filed February 25, 1904. (Signed) Paul E. Mortimer, deputy clerk.

Petition for Rehearing.

In Supreme Court of the State of Louisiana.

THE V., S. & P. RY. CO.
vs.
ALBERT TIBBS ET ALS., SMITH HEIRS and LEONARD Substituted. } No. 14865.

In this case now come the defendants and petition the court to grant a rehearing for the reason that the court erred, as they believe:

150 First. In overruling the objection of defendants to all evidence offered by the plaintiff in support of its title, on the ground that the judgment in the case of Smith Heirs *vs.* Turner No. 80 in U. S. circuit court, was *res judicata* of all of the issues raised by the pleadings in this case, and no evidence could be heard upon the same. (See evidence, p. 1.)

Second. In overruling the plea of *res judicata*, and especially in overruling the plea of *res judicata* set up in the answers of the defendants as to all of the issues raised by the proceedings in this case.

It was never our purpose to contend that the ownership of the whole of Silver Lake was adjudicated upon in the former suit or that the judgment could have been executed upon any other than the thirty-five acres then alone before the court.

What we do contend for is that the statute and strength of the same titles, now relied upon by both parties in this case, were tested and settled in that suit and that that judgment is conclusive as to the strength of these titles when pitted against each other in any other case, whether involving parts of the same tract of land or other distinct tracts embraced in the same titles.

Whether it is a part of the same tract or not is wholly immaterial. The real question is: Are the titles now relied upon the same as in the former case? Are the issues the same? If so, the former judgment is *res judicata* as to the strength of these titles and as to these issues.

A judgment may be *res judicata* absolutely, or it may be *res judicata* only as to certain issues involved in a former suit.

Where the piece of property demanded in the second suit is the same as that demanded in the former suit, between the same
151 parties, in the same capacity, on the same title, the plea of *res judicata* is absolute, not only as to all issues that were raised in the former suit, but also as to all that could have been raised.

But where the price of property in the second suit, between the

same parties, in the same capacity, is a different piece from that claimed in the former suit on the same titles, the plea of *res judicata* is not an absolute bar as to all issues that could have been raised in the former suit, but were not so raised, but in a bar only as to the issues that were in fact raised and decided in such former suit. As to issues not raised in the former suit, the matter is still open.

This was well illustrated in the case of Crowell *vs.* County of Sac, 94 U. S., 351. In that case the plaintiff had in a former case sued on certain coupons clipped from bonds issued by the county of Sac to build a court house. The bonds were shown to have been illegally issued, and the plaintiff, though a holder before maturity, failed to show that he was a holder for value, and there was judgment against him.

He afterwards sued on other coupons clipped from these and other bonds, and offered to prove that he had paid full value. The former judgment was urged as *res judicata* against such plea and evidence. The Supreme Court of the United States overruled the objection and admitted the evidence, holding that the judgment in the former case was *res judicata* as to the illegality of the bonds and other issues therein decided, but was not *res judicata* as to this issue, which had not been raised in the former case.

Now, applying this to the case at bar:

The present suit being for a different piece of property, the judgment in the former case is not *res judicata* of issues not raised
152 and decided in the former case, but only of those which were in fact raised and decided in the case.

Had either party raised other issues than those raised in the former suit, as, for instance, title by prescription, or by tax sale, or by purchase from a stranger, or from his antagonist's author, the former judgment would not be *res judicata* as to any of such issues, because they were not raised or decided in such former judgment.

But it so happens in this case that no issues are in fact raised that were not raised and decided in the former case. The judgment, therefore, in that case being *res judicata* of all of these issues, they are not open to controversy in this case.

The same thing happened in the case of The Southern Pacific Railway Company *vs.* United States, 168 U. S., 1. In that case both claimed certain lands. In a former suit or suits the same parties had claimed other lands under the same respective title.

No issues were raised that were not raised and decided in the former suit. The judgments in the former suits were plead as *res judicata* as to these issues and the plea was sustained. In the case there was no suggestion that the lands embraced in the last suit were before the court in the former suit.

So in the case at bar; the titles and issues are precisely the same as in the former case.

The railroad company set up the same title; the Smith heirs set up the same. The railroad company sets up the same plea of *res*

judicata, based upon the judgment of the State court in the case of State *vs.* Smith, that it set up in the former case.

Upon all of these issues there was verdict and judgment for the Smith heirs, and we submit that such verdict and judgment
153 are *res judicata* of these issues in this suit; and there are no other issues in this suit.

The suggestion that because the first suit involved property of less value, the judgment could not be *res judicata* of the issue involved, has never been adopted as outweighing the necessity for the recognition of the principle underlying *res judicata*, that when an issue has once been made and decided it can never be raised between the same parties in any other suit.

In the recent case of Harvin *vs.* Blackman, No. 14,917, decided January 4, not yet reported, this court held that a judgment for possession and for three hundred dollars rent was *res judicata* as to the existence and validity of the relation of landlord and tendant in suit for the ownership of the plantation, worth four or five thousand dollars, and dismissed the suit as in case of nonsuit, holding that the tenant could not question the title of landlord, although the tenant alleged and proved that the title and the lease had been exacted of him by force and threats of violence. The court held that this issue was determined in the suits for possession and for rent and could not be raised in the suit for the ownership, and this though the suit for rent and possession were instituted after the suit for ownership was brought and while it was pending in the supreme court.

In that case the thing of value involved in the suit and judgment plead as *res judicata* was three hundred dollars, the rent of one year, and that judgment was sustained as *res judicata* of the issues involved in that suit when they arose in the suit for the ownership of the plantation itself, was worth about fifteen times as much as the amount involved in the suit for rent. The decision illustrates prefectly our contention in this case.

The thing of value in the rent suit was three hundred dol-
154 lars; the thing of value in the last suit was the plantation, worth fifteen times as much.

Certainly the things in dispute were not the same, but this issue had been raised in the former suit, and the court held it could not be raised again.

So in the case at bar.

The thing of value in the suit No. 80 was the thirty-five acres of land; the thing of value in this suit is the remaining one hundred and fifty-one acres, or a little more than four times as much. They are not the same, but the issues raised in the former suit are all the same that are raised in this suit and they are all closed by the verdict and judgment in that case.

We respectfully ask that a rehearing may be granted, in order that the court may consider and passed upon the question of *res judicata* as presented in the answers where it is plead as *res judicata*, and es-

toppel as to the issues raised in the former suit, not on the theory that the same piece of property was before the court in the former case, but that the same issues and titles were before the court and pitted against each other then as now.

Respectfully submitted,

(Signed) W. P. HALL, *Of Counsel.*

(Endorsed:) No. 14,865. In the supreme court of Louisiana. On petition for rehearing. The V. S. & P. Ry. Co. *vs.* Albert Tibbs, *et als.* Smith Heirs and Leonard substituted. Filed February 25th, 1904. (Signed) Paul E. Mortimer, deputy clerk.

Rehearing Refused.

NEW ORLEANS, MONDAY, *March 28th*, 1904.

155 The court was duly opened, pursuant to adjournment.

Present: Their honors Francis T. Nicholls, chief justice, Joseph A. Breaux, Frank A. Monroe, Olivier O. Provosty, Alfred D. Land, associate justices.

By the COURT:

VICKSBURG, SHREVEPORT & PACIFIC RAILROAD COMPANY *vs.* ALBERT TIBBS ET ALS. } No. 14865.

It is ordered that the rehearing applied for in this case be refused.

Petition and Order for Writ of Error.

In the Supreme Court of Louisiana.

THE VICKSBURG, SHREVEPORT & PACIFIC RAILWAY CO. *vs.* ALBERT TIBBS ET ALS., THE SMITH HEIRS, WILSON, and Leonard Substituted. } No. 14865.

Justices of the supreme court of the State of Louisiana:

The petition of the defendants herein, A. H. Leonard and George R. Wilson, R. N. Smith, E. A. Smith, wife of Marine Du Val joined and authorized by her husband; W. H. Smith, Annie B. Smith, Eddie Smith, Robert Smith, Ernest Smith, John L. Smith, W. W. Smith, Susan Crenshaw, wife of A. Crenshaw joined and authorized by her husband; J. H. Smith, Carrie L. Smith, J. S. Keene, Horace Keene, Florence Keene Spear, wife of L. Spear joined and author-

ized by her husband, and Marine Du Val, A. Crenshaw and L. Spear herein joining and authorizing their said wives, defendants
156 and appellants in the above numbered and titled cause respectfully shows that on the 15th day of February 1904. this honorable court rendered a decree and entered a judgment in this cause in favor of the Vicksburg, Shreveport & Pacific Railway Co. and against your petitioners, which said decree and judgment became final on the 28th day of March, 1904, this being the highest court in the State *to* which this case could be corrected.

That in said judgment and decree and in the proceedings prior thereto, certain errors were committed to the prejudice of your petitioners, all of which will appear in detail from the assignment of errors, which is filed with this petition; that in this case petitioners claimed and claim rights, privileges and immunities under the Constitution and laws of the United States, and that the decree and judgment of this court is adverse to same.

That there was drawn in question in this cause the validity and effect of acts of Congress of the United States of date March 2nd, 1849 and September 28th 1850 respectively, known as the swamp land grants, under which your petitioners claimed and claim that they have title to and are owners of the land in controversy in said cause, and there was also drawn in question the validity and effect of a judgment plead as *res judicata* by these defendants in this cause, rendered by a Federal court to-wit; the circuit court of the United States for the fifth circuit and western district of Louisiana, Shreveport division in a certain cause No. 80 on docket of said court entitled R. N. Smith *et als. vs.* George A. Turner *et als.*

That the decree and judgment of this honorable court was against the title, right, privilege and immunity specially set up and claimed by petitioners under said acts of Congress and said judgment of said Federal court.

157 That there was also *frawn* in question in this cause the validity and effect of an act of the Congress of the United States of date June 3rd 1856, entitled An act making a grant of land to the State of Louisiana to aid in the construction of railroads in said State, under which the said railway Co. claimed to have title to and to be owners of the land in controversy herein, but which your petitioners claimed did not convey any title to or vest any right whatever in said railway Co. That the decree and judgment of this honorable court was in favor of said railway Co. and against the claims and contention of your petitioners.

That petitioners desire a writ of error from the said decree and judgment of this honorable court, returnable to the honorable the Supreme Court of the United States.

Wherefore, petitioners prays that a writ of error to operate as a supercedeas may issue in this behalf to the honorable, the Supreme Court of the United States for the correction of the errors so contained that a transcript of the record of the proceedings and papers in this cause duly authenticated may be sent to said Supreme Court

of the United States and that pending said writ of error the said decree and judgment of this honorable court be suspended and that the supercedeas bond be fixed and approved; they pray for all orders necessary and for general relief.

(Signed) E. W. SUTHERLIN,
(Signed) A. H. LEONARD,
(Signed) W. P. HALL, *Att'ys.*

Order.

The above and foregoing petition having been read and considered, it is ordered that the writ of error prayed for be
158 granted returnable in the Supreme Court of the United States at the city of Washington on the 30th day of April 1904, according to law upon petitioners furnishing bond with sufficient security and conditioned according to law in the sum of ten thousand dollars and pending said writ of error, let the judgment herein rendered be suspended.

(Signed) FRANCIS T. NICHOLLS,
Chief Justice.

New Orleans, March 30, 1904.

(Endorsed:) No. 14,865. In supreme court of Louisiana. The Vicksburg, Shreveport & Pacific Ry. Co. *vs.* Albert Tibbs *et als.* Smith Heirs *et als.* substituted. Petition and order for writ of error to supreme court of the State of Louisiana. Filed March 30, 1904. (Signed) T. McC. Hyman, clerk.

Assignment of Errors.

Supreme Court of Louisiana.

V., S. & P. Ry. Co.
vs.
Albert Tibbs et als., Smith Heirs Substituted. } No. 14865.

The defendant- submit and attach to their petition for writ of error *of* the Supreme Court of the United States the following assignment of errors upon which they and each of them will rely in the prosecution of the writ of error in this cause.

1st. The court erred, as they believe in overruling the pleas of *res judicata and estoppel* interposed by petitioners as defendants in this cause, based upon the judgment of the circuit court of the United States for the fifth circuit, western district of Louisiana in the case of R. N. Smith *et als. vs.* George A. Turner *et als.*, No. 80 on
159 the docket of said court.

2nd. The court erred in refusing to hold that the issues set up and decided in said suit in said Federal court were *res judicata*

of the same issue when set up in this suit between the same parties, and in holding that where the same parties had in a former suit set up the same titles set up by each in this suit and there was final judgment upon the same, that these issues and these titles could be again set up and litigated between the same parties when other lands acquired under the same titles are in controversy.

3rd. The court erred in holding that where a part of a tract of land was in a former suit claimed by one party under a title and the defendant in that suit claimed the same land under another title, and there was final verdict and judgment between the parties as to which had the better title, and in a subsequent suit involving another piece of land a part of the same tract, between the same parties, each set — a claim of ownership by the same title under which he had claimed the former piece of land, that in such case the judgment so rendered passing on the strength of the two titles in the former suit is not *res judicata* as to their strength in the subsequent suit.

4th. The court erred in refusing to hold that the matters once determined in a court of competent jurisdiction may never again be called in question by parties or privies against objection and in refusing to hold that the estoppel resulting from a judgment as against parties and privies extends to every material allegation and statement which having been made on the one side and denied on the other was at issue in the case in which said judgment was rendered and was determined therein, and in refusing to hold that where parties are identical and the titles involved are the same, a judgment in the one case is conclusive as to the strength of those
160 titles in another case where other lands are claimed by both parties under the same titles and same issues.

5th. The court erred in refusing to hold that the acts of Congress usually known as the swamp land grants were, and are grants *in presenti* vesting at their date in the State and its assigns, title to the land in controversy herein.

6th. The court erred in refusing to give effect to the reservation made in the act of Congress of June 3rd, 1856. granting land to the State of Louisiana in aid of railroads of all lands previously granted or as to which interfering rights existed.

7th. The court erred in refusing to hold lands granted to the swamp land grants and in which third parties had acquired rights could not be granted by any subsequent act of Congress.

8th. The court erred in holding that the act of Congress of June 3rd, 1856 granting land in aid of railroad vested title to the land in controversy in the Vicksburg, Shreveport & Pacific Railway Co. and that despite the reservation in said act these lands passed under it although they had been previously granted to the State by the swamp land grants.

9th. The court erred in holding that the Vicksburg, Shreveport & Pacific Railway Co. has a legal right to the land in controversy good against the world enabling it to recover in a petitory action.

10th. The court erred in holding that an action to annul a title to the land being the real action, may after the death of the defendant be revived and prosecuted by citation only to the administrator of the deceased defendant, even though the heirs of said defendant are known and present or represented by agents, tutors or guardians.

11th. The court erred in holding that action may be taken,
161 proceedings had and orders made in a cause pending on appeal in the absence of any party defendant.

12th. The court erred in holding that the judgment in the suit of The State of Louisiana *vs.* W. W. Smith in the district court of Caddo parish, Louisiana, had and has the force of the thing adjudged.

13th. The court erred in rendering a decree and in entering a judgment herein in favor of plaintiff and against defendants, your petitioner, such judgment and decree being contrary to the law and the evidence.

Respectfully submitted.

(Signed) E. W. SUTHERLIN,
(Signed) A. H. LEONARD,
(Signed) W. P. HALL, *Att'ys.*

(Endorsed:) No. 14865. In supreme court of Louisiana. The Vicksburg, Shreveport & Pacific Railroad Company *vs.* Albert Tibbs *et als.* Smith heirs *et als.* substituted. Assignment of errors. Filed March 30, 1904. (Signed) T. McC. Hyman, clerk.

Writ of Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court before you
162 or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The Vicksburg, Shreveport and Pacific Railroad Company, J. H. McCormick receiver and C. C. Harvey plaintiffs and A. H. Leonard, George R. Wilson, R. N. Smith, E. A. Smith, wife of Marine Du Val joined and authorized by her husband, W. H. Smith, Annie B. Smith, Eddie Smith, Robert Smith, Ernest Smith, John L. Smith, W. W. Smith, Susan Crenshaw, wife of A. Crenshaw joined and authorized by her husband; J. H. Smith, Carrie L. Smith, J. S. Keene, Horace Keene, Florence Keene Spear wife of L. Spear joined and authorized by her husband, defendants—No. 14,865, of the dicket of said court, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United

States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of the clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened to the great damage of the said A. H. Leonard, George R. Wilson, R. N. Smith, E. A. Smith, wife of Marine Du Val joined and authorized by her husband; W. H. Smith, Annie B. Smith, Eddie Smith, Robert Smith, Ernest Smith, John L. Smith, W. W. Smith, Susan Crenshaw, wife of A. Crenshaw joined and authorized by her husband; J. H. Smith Carrie L. Smith, J. S. Keene, Horace Keene, Florence Keene Spear wife of L. Spear joined and authorized by her husband as by their complaint appears. We being willing that
163 error, if any hath been, should be duly corrected, and full and speedly justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record — proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, within 30 days from the date hereof, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 30 day of March, in the year of our Lord one thousand nine hundred and four.

(Signed) H. J. CARTER,
Clerk of the Circuit Court of the United States for the Eastern District of Louisiana.

Allowed by

(Signed) FRANCIS T. NICHOLLS,
[SEAL.] *Chief Justice.*

(Endorsed:) No. 14,865. The Vicksburg, Shreveport and Pacific Railway Company *et als. versus* Albert Tibbs, *et als.* Smith heirs Leonard *et als.* substituted. Writ of error. Copy of a writ of error lodged in the clerk's office of the supreme court of the State of Louisiana, in pursuant of the statute in such cases made and provided this 30th day of March one thousand nine hundred and four. (Signed) W. P. Hall, attorney of plaintiff in error. Filed March 30, 1904. (Signed) T. McC. Hyman, clerk.

164 *Bond for Writ of Error.*

In the Supreme Court of Louisiana.

THE VICKSBURG, SHREVEPORT & PACIFIC R. R. Co.
vs.
ALBERT TIBBS ET ALS., THE SMITH HEIRS, WILSON and Leonard Substituted. } No. 14865.

Know all men by these present- that we, A. H. Leonard, George R. Wilson, R. N. Smith, E. A. Smith, wife of Marine DuVal joined and authorized by her husband W. H. Smith, Annie B. Smith, Eddie Smith, Robert Smith, Ernest Smith, John L. Smith, W. W. Smith, Susan Crenshaw, wife of A. Crenshaw joined and authorized by her husband; J. H. Smith, Carrie L. Smith, J. S. Keene, Horace Keene, Florence Keene Spear, wife of L. Spear joined and authorized by her husband, as principals and F. A. Leonard and C. S. Bauman and P. J. Trezavant as sureties are held and firmly bound unto The Vicksburg, Shreveport and Pacific Railroad Company and J. H. McCommick, receiver, and C. C. Harvey and to all parties interested therein in the full sum of ten thousand dollars to be paid to the said plaintiffs, their attorneys, executors, administrators or assigns, for which payment well and truly to be made we bind ourselves, our heirs, executors and administrators jointly and severally by these presents.

Sealed with our seals and dated this 29th day of March A. D. 1904.

Whereas lately at a term of the supreme court of the State of Louisiana holding session in and for the State of Louisiana in a suit pending in said court, wherein The Vicksburg, Shreveport & Pacific R. R. Co. is plaintiff, and the above bound parties principals are defendants, judgment was rendered against said defendants
165 and they have obtained a writ of error and filed a copy thereof in the clerk's office of said supreme court to reverse the judgment in the aforesaid suit and citation directed to the said plaintiffs citing and admonishing them to be and appear at the Supreme Court of the United States to be holden at Washington within thirty days from the 30th day of March 1904.

Now the condition of the above obligation is such that if the said parties principal shall prosecute their writ to effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be void, else to remain in full force and virtue

. Signed, sealed and delivered in the presence of W. P. Hall and G. W. Jack.

Attest:

(Signed) G. W. JACK.
(Signed) W. P. HALL.
(Signed) A. H. LEONARD.
(Signed) GEO. R. WILSON.
(Signed) JNO. L. SMITH.
ANNIE B. SMITH.
R. N. SMITH.
E. A. SMITH.
W. H. SMITH.
EDDIE SMITH.
W. W. SMITH.
MARINE DU VAL.
SUSAN CRENSHAW.
ROBERT SMITH.
F. K. SPEAR.
L. SPEAR.
A. CRENSHAW.
ERNEST SMITH.
J. H. SMITH.
CARRIE L. SMITH.
J. S. KEENE.
H. KEENE.
PETER J. TREZAVANT,
Per W. P. HALL, *Att'y.*
(Signed) F. A. LEONARD.
C. S. BAUMAN.

Personally appeared F. A. Leonard who being duly sworn deposes and says, that he is the surety on the within bond; that he resides in Shreveport, Caddo parish Louisiana. And is worth more than ten thousand dollars over and above all of his debts and liabilities and property exempt from execution.

(Signed) F. A. LEONARD.

Subscribed and sworn to before me this 29th day of March, 1904.

(Signed) G. G. CONWAY,
[SEAL.] *Deputy Clerk 1st Dist. Court, La.*

166 Personally appeared before me the undersigned authority, C. S. Bauman, who being duly sworn deposes and says, that he is the surety on the within bond; that he resides in Shreveport Caddo parish, La., and is worth more than ten thousand dollars over and above all of his debts and liabilities and property exempt from seizure.

(Signed) C. S. BAUMAN.

Sworn to and subscribed before me this 29th day of March 1904.

[SEAL.] (Signed) CHAS. L. GAINE,
Notary Public.

(Endorsed:) No. 14,865. In supreme court of Louisiana. The Vicksburg, Shreveport & Pacific Ry. Co. *vs.* Albert Tibbs, *et als.* Smith heirs *et als.* substituted. Bond for writ of error. Filed March, 30, 1904. (Signed) T. McC. Hyman, clerk.

167 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The Vicksburg Shreveport and Pacific Railroad Company, J. H. McCormick receiver and C. C. Harvey, plaintiffs and A. H. Leonard George R. Wilson, R. N. Smith, E. A. Smith, wife of Marine Du Val joined and authorized by her husband; W. H. Smith, Annie B. Smith, Eddie Smith, Robert Smith, Ernest Smith, John L. Smith, W. W. Smith, Susan Crenshaw, wife of A. Crenshaw joined and authorized by her husband; J. H. Smith, Carrie Smith, J. S. Keene, Horace Keene, Florence Keene Spear wife of L. Spear joined and authorized by her husband, defendants, No. 14865 of the docket of said court wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of the clause of the Constitution, or of a treaty, or
168 statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened, to the great damage of the said A. H. Leonard, George R. Wilson, R. N. Smith, E. A. Smith wife of Marine Du Val joined and authorized by her husband; W. H. Smith, Annie B. Smith, Eddie Smith, Robert Smith, Ernest Smith, John L. Smith, W. W. Smith, Susan Crenshaw wife of A. Crenshaw joined and authorized by her husband; J. H. Smith, Carrie L. Smith, J. S. Keene, Horace Keene, Florence Keene Spear wife of L. Spear joined and authorized by her husband; as by their complaint appears. We being willing that error, if any hath been, should be duly corrected,

and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, within thirty days from the date hereof, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 30 day of March, in the year of our Lord one thousand nine hundred and four.

[Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La.]

H. J. CARTER,
Clerk of the Circuit Court of the United States for the Eastern District of Louisiana.

Allowed by
FRANCIS T. NICHOLLS,
Chief Justice.

[Endorsed:] No. 14,865. The Vicksburg, Shreveport & Pacific Rail Road Company *versus* Albert Tibbs, *et als.* Smith heirs, Leonard *et als.* substituted. Writ of error. Filed March 30, 1904 T. McC. Hyman clerk.

169 THE UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

The President of the United States to C. C. Harvey, a resident of the parish of Orleans and State of Louisiana, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington, within thirty days from the date hereof pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana at New Orleans, wherein The Vicksburg, Shreveport and Pacific Railroad Co. and J. H. McCormick, receiver of the said railway company and C. C. Harvey are plaintiffs and defendants-in-error, and A. H. Leonard, Geo. A. Wilson, R. N. Smith, E. A. Smith, Marine Duval, W. H. Smith, Annie B. Smith, Eddie Smith, Robert Smith, Ernest Smith, Jno. L. Smith, W. W. Smith, Susan Crenshaw, A. Crenshaw, J. H. Smith, Carrie L. Smith, J. S. Keene, H. Keene, F. K. Spear, L. Spear are defendants and plaintiffs in error, No. 14,865 on the docket of the supreme court of Louisiana, to show cause, if any there be, why the judgment rendered against the said

defendants plaintiffs-in-error as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 30th day of March, in the year of our Lord one thousand nine hundred and four.

[Seal Supreme Court of the State of Louisiana.]

FRANCIS T. NICHOLLS,
Chief Justice of the Supreme Court of the State of Louisiana.

[Endorsed:] R. C. C. Harvey. 3/31/04. Goss. Supreme court of the State of Louisiana. No. 14,865. The Vicksburg, Shreveport & Pacific Railroad Company *et als. vs.* Albert Tibbs *et als.* Smith heirs, Leonard *et al.*, substituted. Citation. Filed March 31, 1904. T. McC. Hyman, clerk.

Sheriff's Return.

Received Thursday Mar. 31 1904 and on the same day month and year I served a copy of the within citation on C. C. Harvey a resident of the parish of Orleans defendant herein in person.

Returned same day.

C. M. GOSS,
Deputy Civil Sheriff, Parish of Orleans, State of Louisiana.

Christian M. Goss, deputy civil sheriff for the parish of Orleans State of Louisiana being sworn deposeth and says that he made a personal service of a copy of the within citation on C. C. Harvey, defendant herein, a resident of the parish of Orleans.

C. M. GOSS.

Sworn to before me this 31 day of March 1904.

[Seal Supreme Court of the State of Louisiana.]

T. McC. HYMAN,
Clerk of the Supreme Court of the State of Louisiana.

170 THE UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

The President of the United States to the Vicksburg, Shreveport and Pacific Railroad Company, of the parish of Orleans, C. C. Harvey, president, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington, within thirty days from the date hereof pursuant to a writ of error filed in the clerk's office of the supreme court of the State of

Louisiana at New Orleans, wherein The Vicksburg, Shreveport and Pacific Railroad Company and J. H. McCormick, receiver of said railroad company, and C. C. Harvey are plaintiffs and defendants in error and A. H. Leonard, Geo. R. Wilson, R. N. Smith, E. A. Smith, Marine Duval, W. H. Smith, Annie B. Smith, Eddie Smith, Robert Smith, Ernest Smith, Jno. L. Smith, W. W. Smith, Susan Crenshaw, A. Crenshaw, J. H. Smith, Carrie L. Smith, J. S. Keene, H. Keene, F. K. Spear, L. Spear are defendants and plaintiffs in error, No. 14,865 on the docket of the supreme court of Louisiana to show cause, if any there be, why the judgment rendered against the said defendants, plaintiffs in error, as in said writ or error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 30th day of March, in the year of our Lord one thousand nine hundred and four.

[Seal Supreme Court of the State of Louisiana.]

FRANCIS T. NICHOLLS,
Chief Justice of the Supreme Court of the State of Louisiana.

[Endorsed:] R. C. C. Harvey. 3/31/04. Goss. Supreme court of the State of Louisiana. No. 14,865. The Vicksburg, Shreveport & Pacific Railroad Company *et als. vs.* Albert Tibbs *et als.*, Smith heirs & Leonard *et al.* substituted. Citation. Filed March 31, 1904. Paul E. Mortimer, dep. clerk.

Sheriff's Return.

Received Thursday Mar. 31 1904 and on the same day, month and year I served a copy of the within citation on The Vicksburg, Shreveport and Pacific Railroad Company defendant herein by personal service on C. C. Harvey its president.

Returned same day.

C. M. GOSS,
Deputy Civil Sheriff, Parish of Orleans, State of Louisiana.

Christian M. Goss, deputy civil sheriff for the parish of Orleans, State of Louisiana being sworn deposeth and says that he made a personal service of a copy of the within citation on C. C. Harvey, president of the Vicksburg, Shreveport and Pacific Railroad Company.

C. M. GOSS.

Sworn to before me this 31 day of March 1904

[Seal Supreme Court of the State of Louisiana.]

T. McC. HYMAN,
Clerk of the Supreme Court of the State of Louisiana.

171 THE UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

The President of the United States to J. H. McCormick, receiver of the Vicksburg, Shreveport and Pacific Railroad Company, of the parish of Ouachita, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington, within thirty days from the date hereof pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana at New Orleans, wherein The Vicksburg, Shreveport and Pacific Railroad Company and J. H. McCormick, receiver of said railroad company, and C. C. Harvey are plaintiffs and defendants in error and A. H. Leonard, Geo. R. Wilson, R. N. Smith, E. A. Smith, Marine Duval, W. H. Smith, Annie B. Smith, Eddie Smith, Robert Smith, Ernest Smith, Jno. L. Smith, Susan Crenshaw, A. Crenshaw, J. H. Smith, Carrie L. Smith, J. S. Keene, H. Keene, F. K. Spear and L. Spear are defendants and plaintiffs in error, No. 14865 on the docket of the supreme court of Louisiana, to show cause, if any there be, why the judgment rendered against the said defendants, plaintiffs in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 30th day of March, in the year of our Lord one thousand nine hundred and four.

[Seal Supreme Court of the State of Louisiana.]

FRANCIS T. NICHOLS,
Chief Justice of the Supreme Court of the State of Louisiana.

[Endorsed:] Supreme court of the State of Louisiana. No. 14865. The Vicksburg, Shreveport and Pacific Railroad Company *et als. vs.* Albert Tibbs *et als.*, Smith heirs and Leonard *et al.* substituted. Citation. Filed April 5, 1904 T. McC. Hyman clerk.

Sheriff's Return.

Before me the undersigned authority came and appeared D. A. Johnston who being duly sworn deposes and says that he is the sheriff of the parish of Ouachita, Louisiana and that he served a true copy of this citation on J. H. McCormick, receiver by handing said copy to him in person at the city of Monroe in said parish of Ouachita on the 4 day of April 1904.

D. A. JOHNSTON,
Sh'ff Ouachita Parish, La.

Sworn & subscribed before me this 4 day of April, 1904.

M. W. KELLY,
U. S. Com., West. D'st La.

172 *Clerk's Certificate.*

UNITED STATES OF AMERICA, }
State of Louisiana. }

Supreme Court of the State of Louisiana.

I, Thomas McCabe Hyman, clerk of the supreme court of the State of Louisiana do hereby certify that the foregoing one hundred and seventy-one pages contain a full, true and complete copy of the proceedings had in the first judicial district court for the parish of Caddo, in a certain suit wherein The Vicksburg, Shreveport and Pacific Railroad Company, were plaintiffs, and Albert Tibbs and others, Smith Heirs and Leonard substituted, were defendants, and also of all the proceedings had in this supreme court on the appeal taken by said defendants, which appeal is now on the files thereof, under No. 14865.

Seal Supreme Court of the State of Louisiana.

In testimony whereof I have hereunto set my hand, and affixed the seal of said court at the city of New Orleans, this sixteenth day of April, *anno Domini*, one thousand nine hundred and four, and in the one hundred and twenty-eighth year of the Independence of the United States of America.

T. McC. HYMAN, *Clerk.*

173 *Certificate of the Chief Justice.*

I, Joseph A. Breaux, chief justice of the supreme court of the State of Louisiana, do hereby certify that Thomas McCabe Hyman is clerk of the supreme court of the State of Louisiana; that the signature of Thomas McCabe Hyman, to the foregoing certificate is in the proper handwriting of him the said clerk; that said certificate is in due form of law, and that full faith and credit are due to all of his official acts as such.

Seal Supreme Court of the State of Louisiana.

In testimony whereof, I have hereunto set my hand and seal at the city of New Orleans, this the sixteenth day of April, *A. D.* one thousand nine hundred and four, and in the one hundred and twenty-eighth year of the Independence of the United States of America.

JOSEPH A. BREAUX,
Chief Justice.

174 *Clerk's Certificate.*

I, Thomas McCabe Hyman, clerk of the supreme court of the State of Louisiana do hereby certify that the Honorable Joseph A. Breaux, is and was at the time of signing the foregoing document chief justice of our supreme court and that the signature affixed to the same is in the proper handwriting of him the said chief justice.

Seal Supreme Court of the State of Louisiana.

In testimony whereof, I have hereunto set my hand and seal at the city of New Orleans, this the sixteenth day of April, *A. D.* one thousand nine hundred and four, and in the one hundred and twenty-eighth year of the Independence of the United States of America.

T. McC. HYMAN, *Clerk.*

Endorsed on cover: File No. 19,308. Louisiana supreme court. Term No. 233. A. H. Leonard, George R. Wilson, R. N. Smith, *et al.*, plaintiffs in error, *vs.* The Vicksburg, Shreveport and Pacific Railroad Company, J. H. McCormick, receiver, & C. C. Harvey. Filed April 23rd, 1904. File No. 19,308.

The Supreme Court of the United States

October Term, 1904.

No. 233.

A. H. LEONARD, GEO. R. WILSON, R. N. SMITH, ET AL.

Plaintiffs in Error,

Versus

THE VICKSBURG, SHREVEPORT, AND PACIFIC RAILROAD COMPANY,

J. H. McCORMICK, Receiver,
and C. C. Harvey. President.

Brief in Reply to Motion to Dismiss or Affirm.

SYLLABUS.

"Whether a State Court has given due effect to a decree or judgment of a Court of the United States, is a question arising under the Constitution and Laws of the United States, and is within the jurisdiction of the Federal Courts."
120 U. S. 141; 107 U. S. 3;
162 U. S. 329; 169 U. S. 657;
183 U. S. 233; 21 Wal. 130.

Matters once determined in a court of competent jurisdiction may never again be called in question by parties or privies against objection; the estoppel resulting from a judgment as against parties and privies extends to every material allegation and statement which having been made on the one side and denied on the other was at issue in the case in which said judgment was rendered and was determined therein, and where parties are identical and the titles and issues are the same as in the former suit, the final judgment in such former suit is conclusive as to the strength of those titles in a second suit where other lands are claimed by both parties under the same titles and the same issues.
168 U. S. 1; 7 Wal. 619;
157 U. S. 683; 101 U. S. 638.
124 U. S. 225; 24 How. 333;
94 U. S. 351.
Black on Judgments, p. 739.

The fact that the judgment of the Federal Court plead as res judicata in the State Court may in the opinion of the State Court, have been erroneous does not render it any the less conclusive of the issues therein decided.

"It is a doctrine of law too long established to require a citation of authorities, that where a court has jurisdiction it has a right to decide every question which ocurs in the cause, and whether its decision be correct or otherwise, its judgment till reversed is regarded as binding in every other court."
169 U. S. 432; 7 How. 612.

The fact that new evidence may be offered or new arguments suggested does not affect the question.

"Whatever is new in the evidence now before us, touching that matter, is simply cumulative on the one side or the other. The application to consider that evidence is practially an application for a re-hearing as to things directly determined in the former suits between the same parties, and which adjudication has never been modified. Such a course

of proceedure is wholly inadmissible under the settled rule of res judicata."
168 U. S., p. 65.
Where in a former suit by these plaintiffs in error against this railroad company for thirty-five acres of the same tract of land, in the United States Circuit Court for the Western District of Louisiana, both parties claimed under the same titles and the same issues under which both parties now claim the remaindef of said tract of land in this suit, and there was a final verdict and judgment in favor of these plaintiffs in error in that case upon all of these titles and issues now again presented to the Court, such final verdict and judgment is res judicata and conclusive as to all of such titles and issues there decided; and since no new titles or issues are presented in this case, such judgment is conclusive of this case, and the State Court having refused to so hold and give due effect to such judgment, a Federal question of the highest order is presented for the decision of this Court.

STATEMENT OF THE CASE.

THE PETITION

The Vicksburg, Shreveport and Pacific Railroad Company instituted this suit against Albert Tibbs and many others, asserting title to lots 1, 2, 3, 4, 5, 6, 7, 8, 9 of Section 31, Township 18, Range 13, containing 178.80 acres, less a parcel of land recovered by plaintiffs in suit of **Robt. N. Smith et als. vs. Geo. A. Turner et als.**, No. 80 in United States Circuit Court, Fifth Circuit and Western District of Louisiana, and more particularly described as follows (then follows a description of the land, 35 acres, recovered in that suit.)

Petitioner further represents that the said company acquired title to said property through the grant of the United States in Act approved June 3rd, 1856, entitled an Act making a grant to the State of Louisiana to aid in the construction of railroads in siad state, duly accepted by the grantee and the trustee, and that the said land was included in the approved selections made under authority of said Act, and that its title was further acquired through divers conveyances, mortgages, decrees and sales, and by the construction of the railroad through the Parish of Caddo from the west bank of Red river to the Texas State line west of Greenwood before the 3rd day of June, 1866. T. 1.

ANSWER AND PLEA OF RES JUDICATA.

The possessors disclaimed all title and averred that they are lessees of A. H. Leonard, George R. Wilson and the heirs of W. W. Smith.

The heirs of Smith and Wilson and Leonard appeared and answered.

They admit that they are in possession of the property claimed by plaintiff, and further admit that they recovered in suit No. 80 in the United Sttes Circuit Court for the Western District of Louisiana, entitled **Robert N. Smith et als. vs. George A. Turner et als.**, the 35 acres excepted from plaintiff's petition. They aver that they are the legal heirs of W. W. Smith except George R. Wilson and A. H. Leonard, who acquired an interest from the Smith heirs.

They allege that the State of Louisiana sold to the said W. W. Smith, on the 14th d ay of May, 1853, the tract of land claimed by plaintiff at the price of one dollar and twenty-five cents per acre, which was paid to the treasury of the State and never returned to him.

That after said sale the State, through the proper authorities, on the 24th day of July, 1855, issued to Smith a patent to said tract of land, as appears by the patent annexed to the answer.

That the State of Louisiana claimed and acquired said tract of land as swamp land and overflowed land granted to the State of Louisiana by Acts of Congress of 1849 and 1850, and that the State sold it to Smith as swamp land.

They further allege that all sales of land in Louisiana made as swamp and overflowed land, whether made by the United States Government or by the State, and whether the land sold was of that character or not, were confirmed by the Acts of Congress approved March 2, 1855, entitled "An Act for the relief of purchasers and locators of swamp and overflowed lands." That said act of Congress was extended so as to protect sales made after its passage by the Act of Congress of March 3, 1857, to confirm all selections of swamp and over-

flowed lands.

That said Act of March 2, 1855, confirmed said title to said Smith, whether swamp land or not, and whether it belonged to the State or to the United States.

That said Smith thus acquired a title to said land from both the State and the United States, by purchase from the State and confirmation from Congress, and that said titles are paramount to all subsequent claims from the Government.

They finally allege that in the case of **R. N. Smith et als. vs. George A. Turner, the** Vicksburg, Shreveport and Pacific Railroad Company substituted, No. 80 on the docket of the United States Circuit Court for the Western District of Louisiana, sitting at Shreveport, in which these defendants and their authors were plaintiffs, and the present plaintiff, the Vicksburg, Shreveport and Pacific Railroad Company, was defendant, these defendants, then plaintiffs, claimed a part of the same tract of land now in dispute upon the same title upon which they now rely; and the said Railroad Company, then defendant, now plaintiff herein, also set up title to the same and relied on the same grant and title from the United States that it now sets up and relies upon in this suit.

That in said suit No. 80 a verdict and final judgment were rendered in favor of these defendants and against said Railroad Company sustaining the titles set up by these defendants as superior to that set up by the said Railroad Company; and these defendants plead said verdict and judgment as res judicata and estoppel of all the questions put at issue and decided in that case, and especially of the right of the said railroad Company to claim any other lands under the same title

against the same title held by these defendants, the respective strength of which titles was then put at issue and then finally decided.

The record in said suit No. 80 was annexed and made a part of the plea and answer. They prayed that plaintiff's demand be rejected and that the plea of res judicata be sustained and plaintiff's demand dismissed. T. 8, 10.

PLEA OF RES JUDICATA BY PLAINTIFF.

The plaintiff, the Railroad Company, filed a plea of res judicata to defendant's answer and claim of ownership of said lands.

It alleged that in a suit entitled **State of Louisiana vs. W. W. Smith,** 5135 on the docket of the District Court of Caddo Parish, filed....., 1857, defendant put at issue the validity and legality of his title to the land described in plaintiff's petition herein, and by virtue of the certificate and patent described in said petition and upon final hearing judgment was rendered in said suit decreeing said certificate and patent null and void, and decreeing the cancellation of same and ordering same to be delivered to the State of Louisiana, plaintiff therein, "All of which will fully appear by reference to certified copy of pleadings, evidence and judgment in said suit, hereto annexed and made part hereof."

That the defendant obtained an appeal which was dismissed by the Supreme Court in 1869, and that the defendants, claiming to be the heirs and assigns of W. W. Smith, are bound by said judgment in said suit which is as to them res judicata and perpetual bar to their rights of action, and therefore plaintiff prays that this exception be sustained and defendant's de-

mand be rejected. T. 14.

The case was tried and from an adverse judgment the defendants appealed to the Supreme Court of the State, where the judgment of the lower court was affirmed.

From the judgment of the State Supreme Court they took this writ of error to this Court, after an unavailing application for a rehearing, and assign, among other errors, the following:

ASSIGNMENT OF ERRORS.

"First. The Court erred, as they believe, in overruling "the pleas of res judicata and estoppel interposed by plain- "tiffs in error as defendants in this cause, based upon the "judgment of the Circuit Court of the United States for the "Fifth Circuit, Western District of Louisiana, in the case of "**R. N. Smith et als. vs. Geo. A. Turner** and the Vicksburg, "Shreveport and Pacific Railroad Co., No. 80 on the docket "of said Court.

"Second. The Court erred in refusing to hold that issues "set up and decided in said suit in said Federal Court were "res judicata of the same issues when set up in this suit "between the same parties, and in holding that where the "same parties had in a former suit set up the same titles "set up by each in this suit, and there was final judgment "upon the same, that these issues and these titles could be "again set up and litigated between the same parties, when "other lands acquired under the same titles are in contro- "versy.

"Third. The Court erred in holding that where a part "of a tract of land was in a former suit claimed by one "party under a title, and the defendant in that suit claimed "the land under another title, and there was final verdict "and judgment between the parties as to which had the "better title, and in a subsequent suit involving another "piece of land, a part of the same tract, between the same "parties, each set up a claim of ownership by the same title

"under which he had claimed the former piece of land, "that in such case the judgment so rendered passing on the "strength of the two titles in the former suit is not res "judicata as to their strength in the subsequent suit.

"Fourth. The Court erred in refusing to hold that the "matters once determined in a court of competent juris- "diction may never again be called in question by parties "or privies against objection and in refusing to hold that "the estoppel resulting from a judgment as against parties "and privies extends to every material allegation and "statement which having been made on the one side and "denied on the other, was at issue in the case in which said "judgment was rendered and was determined therein, and "in refusing to hold that where parties are identical and "the titles involved are the same, a judgment in the one "case is conclusive as to the strength of those titles in "another case, where other lands are claimed by both par- "ties under the same titles and the same issues." T. 320.

These assignments of error reiterate the complaint that the State Supreme Court failed to give due effect to the judgment of a Federal Court plead as res judicata in this case.

That this is a Federal question is well settled.

A FEDERAL QUESTION.

In **Crescent City Live Stock Compny vs. Butchers' Union, etc.**, 120 U. S., p. 141, the syllabus reads:

"Whether a State Court has given due effect to a decree "or judgment of a court of the United States, is a question arising under the Constitution and Laws of the United "States, and is within the jurisdiction of the Federal "Courts."

See also 107 U. S. 3;
21 Wal. 130;
169 U. S. 657;
162 U. S. 329;
183 U. S. 233.

That the Federal question thus presented in the plea of res judicata presented a complete defense to plaintiff's (defendants in error) action and a decision on it was necessary to a decision of the case, will be made manifest by the following brief statement of the case and of the pleadings, and of the suits which preceded the present suit:

THE FIRST ENTRY.

On April 30, 1853, the Legislature of Louisiana passed an Act anthorizing the sale of shallow lakes after they should be surveyed and had become the property of the State. T. 269. It was promulgated June 23, 1853. W. W. Smith, the author of defendant's (plaintiffs in error), purchased the land in question known as Silver Lake, from the State, on May 14, 1853. T. 257.

On June 6, 1853, the entry was marked cancelled, but his money was not reteurned or tendered him. T. 275.

On February 24, 1855, the State isued a patent to Smith in accordance with his purchase, his money not having been returned or tendered to him. T. 257.

STATEMENT OF SUIT NO. 5135.

On December 3, 1857, the State brought suit No. 5135 in the State District Court to annul Smith's patent, on the ground that the purchase was made before the law was promulgated, and before the land was surveyed, and that the patent issued in error, and then tendered him the price, the money being furnished to the District Attorney by a private citizen. T. 259, 266.

The suit was dismissed on exception, appealed to the Supreme Court, reversed and remanded.

W. W. Smith having died, his administration was made defendant on February 14, 1859.

On November 12, 1860, the case was tried and there was verdict and judgment in favor of the state annulling said patent. T. 277, 278. From this judgment the defendant appealed to the Supreme Court, where the case remained until 1869, when the minutes show that it was dismissed by consent of counsel after John W. Smith, the administrator of W. W. Smith, had been finally discharged, and there was no one in Court representing the succession of Smith or the Smith heirs. T. 279, 67, 287.

STATEMENT OF SUIT NO. 80.

On November 6, 1885, the heirs of W. W. Smith, the present defendants (plaintiffs in error), instituted suit in the Circuit Court of the United States for the Western District of Louisiana against George A. Turner, who was in possession of about thirty-five acres of the land, the suit being entitled **R. N. Smith et als. vs. George A. Turner,** No. 80 on the docket of said Court. T. 208.

They alleged that they were the heirs of W. W. Smith and as such succeeded to all of his rights, allege the sale of the land by the State to Smith, the issuance to him of the patent, that it was swamp and overflowed land granted to the State by Acts of Congress of 1849 and 1850, and that it was sold to Smith as such; that all sales of land in Louisiana claimed as swamp and overflowed lands by the State, whether of that

character or not, were confirmed by the Acts of Congress, approved March 2, 1855; that said Act was extended to sales made after its passage and continued in force by the Act of Congress of Mrch 3, 1857, to confirm all selections of swamp and overflowed lands by the several States under the Acts of Congress of 1849 and 1850; that said Act of March 2, 1855, confirmed the title of said Smith to said tract of land, and that he thus got title from both the State and the United States. T. 208.

Turner answered, declaring that he held as tenant of the Vicksburg, Shreveport and Pacific Railroad Company. T. 211.

The Railroad Company, claiming to hold under grant by Act of Congress of June 3, 1856, to the State in aid of railways and under an Act of the Legislature of 1857 passing said grant to the Railroad, filed on July 21, 1886, a plea of res judicata, alleging "That in a suit entitled "**The State of Louisiana vs. W. W. Smith,** No..... on the docket of the District Court of Caddo Parish, Louisiana, filed....., 1857, defendant put at issue the validity and legality of his title to the land described in plaintiff's petition, under and by virtue of the patent described in said petition, and upon a final hearing judgment was rendered in said suit decreeing said certificate and patent null and void, decreeing the cancellation of same and ordering them to be delivered to the State of Louisiana, plaintiff therein; all of which will fully appear by reference to a certified copy of pleadings, evidence and judgment in said suit hereto annexed and made part hereof." T. 218.

On July 29, 1886, the Railroad Company filed its answer.

It began by general denial. It then "Alleges that the sale or entry of said land, as set forth in petition, was cancelled by

the register of the State Land Office on the 10th (6) day of June, 1853, as appears by the records of that office, and which cancellation was duly notified to said W. W. Smith, and that said sale, entry and patent are null, and were done without authority of law, in this, towit:

"First. Because the law under which said entries were made had not been promulgated at the date of the entry.

"Second. Because said land had not at the time of said entry been legally surveyed, nor had any survey thereof been recognized by the State of Louisiana.

"Third. Because the patent to said land was issued by the register in error of the fact that said entry had been cancelled before the law authorizing the sale of shallow lakes had been promulgated.

"Further answering, defendant alleges that said land was never selected by the State of Louisiana as swamp and overflowed land, and has never been reported to the Commissioner of the General Land Office and neveer approved as such by the Secretary of the Interior or Land Commissioner; and further alleges that said land was never listed or returned by the Secretary of the Interior to the State of Louisiana as swamp and overflowed lands, and that the State of Louisina has never claimed or acquired said land as such; and furthermore, that said land had not and never did belong to that class of lands, but to that other class of lands known or designated as shallow lakes, and therefore not embraced in the grant from the United States Government, under the Acts of Congress of 1849 and 1850, of swamp and overflowed lands.

"Defendant further answering alleges that said defendant company is the owner of said land by good and sufficient

title, by grant from the United States Government under Act of Congress approved June 3, 1856, to the State of Louisiana, to aid in the construction of railroads in said State of Louisiana, and which was accepted by said State of Louisiana for such purpose, and all the requirements of said grant having been complied with by said State and by the Vicksburg, Shreveport and Pacific Railroad, the land described in plaintiff's petition being embraced in the said grant, was acquired by said Railroad Company and duly certified or patented as belonging to said company by the United States Government, and which has been legally sold and transferred by said Railroad Company to defendant company and deed duly recorded." T. 291.

Upon these pleadings and issues the case No. 80 went to trial, and there was a verdict for the plaintiffs, the Smith heirs, for the land sued for, being about thirty-five acres of the Silver Lake land. T. 293.

There was judgment for plaintiffs in accordance with the verdict as follows:

> "U. S. Circuit Court, Fifth Circuit, Western District "of Louisiana. Robert N. Smith et al. vs. George A. "Turner and the Vicksburg, Shreveport and Pacific Rail- "road Company No. 80.
>
> "In this case, by reason of the law and the evidence and "the verdict of the jury being in favor of the plaintiffs 'and against the defendants, it is ordered, adjudged and "decreed that the plaintiffs, **Robert N. Smith, Elizabeth A. "Smith, wife of Marvin Duval; Elizabeth W. Smith, Wil- "liam L. Smith and John S. Smith,** .he and they are "hereby declared to be owners of the land in contro- "versy and entitled to possession of the same, said land "being known and designated as follows (then follows

"description) containing thirty-five and 18-100 acres, "situated in the parish of Caddo, Louisiana," etc.

"It is further ordered and decreed that plea of res "judicata be overruled." T. 294.

A writ of error was taken to the Supreme Court of the United States but was dismissed for want of jurisdiction, the thirty-five acres involved in that suit being worth less than two thousand dollars. 135 U. S. 195.

ARGUMENT.

We have thus quoted the pleadings in that case No. 84 at great length, for the reason that it is the verdict and judgment in that case that we urged and plead in the state courts in the case at bar, and urge in this Court, as res judicata and estoppel of every issue of law and fact herein involved; every question of law and fact here in contest having been there litigated and decided, the only difference between the two cases being that it is for a different piece of land but claimed by both sides under the same title. The Railroad Company relied upon the same title in that case as in this and urged the same plea of res judicata based upon the judgment of the State Court in the case of the **State of Louisiana vs. W. W. Smith**, No. 5135, that it urges in this case; and the Smith heirs urge precisely the same titles urged in that case.

In that case all of these issues were decided in favor of the Smith heirs and against the Railroad Company, and we plead that verdict and judgment as res judicata and estoppel of all the issues raised in the present suit, and the failure of

the State Court to give due effect to the said judgment of the United States Circuit Court rendered in said suit No. 80, when plead as res judicata in this suit, presents a Federal question for the decision of this C ourt. See the authorities cited at page..4....of this brief.

Neither is the question in any sense frivolous.

The State district judge overruled the plea for two reasons, First, because the suit No. 80 involved a tract of thirty-five acres, while the present suit involves the remainder of the tract, about 142 acres; and Second, because the judgment in suit No. 80 overruling the plea of res judicata presented in that case and again in this, based upon the judgment of the State Court in **State vs. Smith**, was, in his opinion, rendered upon a false or mistaken certificate of the clerk of the Supreme Court of the State, that the appeal in **State vs. Smith** had not been filed in the Supreme Court, causing the record to show that the case of **State vs. Smith** had not been disposed of. T. 15.

We do not understand that this Court is concerned with the reasons assigned by the inferior court, but only with those assigned by the Supreme Court; but as counsel have seen proper to quote at length from the opinion of the district judge, we will examine it.

The judge says:

> "Through an error on the part of the clerk of the Su-
> "preme Court, he signed a certificate, on July 26, 1886,
> "stating that the case of the **State** vs. **W. W. Smith** had
> "not been filed in the Supreme Court. This certificate
> "was filed in the case of **Robert N. Smith** vs. **George A.**

"**Turner**, causing the record in that case not only to show "that the administrator of the succession of W. W. Smith "had filed his final account, and had been ordered dis- "charged, but that the case of the **State vs. W. W. Smith** "had not been finally disposed of.

"It is the opinion of the court that it is owing to the "fact that the certificate above referred to indicated that "no final decision had been rendered in the case of the "**State vs. Smith** that caused the judge to hold in the case "of **Smith vs. Turner** that the entry of W. W. Smith had "not been cancelled." T. 15

This certificate, T. 288, would show just the reverse. If the transcript of appeal from the judgment rendered in 1860 had not been filed in the Supreme Court in July, 1886, the appeal would be abandoned in law. Indeed, if an appeal is not filed in three days after the return day fixed in the order it is lost unless an extension of time is granted.

But it is probable that the judge intended to refer to the extract from the minutes of the Supreme Court signed by Dupree, clerk Supreme Court, T. 287, which shows that the case was on the Supreme Court docket at Natchitoches and was continued on August 14, 1866. T. 287.

There is no error in this. He does not certify that this was all the orders that had been rendered in the case; indeed, it is not certified at all, but is a mere extract from the minutes of the Supreme Court signed by the clerk.

There was no error in Clerk Wilson's certificate that the appeal had not been filed at Monroe, for it appears to have been filed at Natchitoches.

If there was error at all, it was in the Railroad Company's failing to examine the minutes of the Supreme Court after

August 14, 1866, and find out and show what had been done with the case on August 11, 1869. Surely this was no fault of the Smith heirs or of the clerk of the Supreme Court.

But even if the judgment in suit No. 80 had been erroneous, or had been rendered on a false certificate, or on false testimony (not procured by the adverse party), these things would not make it any the less res judicata. The State Court had enough to do to decide the case before it without inquiring as to the correctness of the judgment plead as res judicata.

In the very next sentence of the opinion, after making this collateral attack upon the final judgment in suit No. 80, the court recognizes that a final judgment is not subject to collateral attack by saying of the judgment in **State vs. Smith**, that,

> "In the case of the **State of Louisiana vs. W. W. Smith**, "the judgment annulling the title to W. W. Smith to "'Silver Lake' and 'Cross Lake' having become final, it "was not subject to be collaterally attacked."

It did not treat the final judgment of the Federal Court with the same consideration.

In **Central National Bank vs. Stevens**, 169 U. S. 432, at page 459, the court quotes with approval from **Peck vs. Jenness**, 7 How. 612 as follows:

> "It is a doctrine of law too long established to require "a citation of authorities, that, where a court has juris- "diction, it has a right to decide every question which 'occurs in the cause, and whether its decision be correct or "otherwise its judgment till reversed is regarded as bind- "ing in every other court; and that where the jurisdiction "of a court, and the right of a plaintiff to prosecute his "suit in it have once attached, that right cannot be ar- "rested or taken away by proceedings in another court."

In almost every case the parties could prove other facts if not prevented by res judicata, and if that would justify a court in rejecting the plea, it would be of little value.

The rule is just the reverse. He has his day in court in which he must produce all of his testimony. Subsequently discovered testimony cumulative in support of the titles urged in the former suit will not reopen the question. This alleged dismissal was in August, 1869, nearly twenty years prior to the trial of suit No. 80, and the lower court was clearly in error in holding that subsequently discovered testimony avoided the effect given to the solemn and final judgment of the Court. 168 U. S. 1.

The question is not whether the judgment was correct on the evidence produced or on such as might have been produced, but the question is: was it a final judgment?

After hearing on the same issues between the same parties, res judicata makes white black and black white.

Once established, it is like any other title which it is the duty of the Court to respect and enforce.

As already stated, the district judge and also the State Supreme Court assigned as another reason why they would not give due effect to the judgment of the Federal Court in said suit No. 80,—that said suit involved only the thirty five acres claimed in that suit and that in determining the question of jurisdiction on appeal the Supreme Court of the United States held that the thing of value before it, the res, was only the thirty five acres, claimed, and dismissed the appeal.

135 U. S. 195.

This ruling of the Supreme Court was a correct conclusion as to what was before it. Only thirty five acres were claimed in that suit and that judgment finally decided the title to only

the thirty five acres and could have been executed upon only the thirty five acres and it was not and is not res judicata as to the ownership of the remainder of the land.

But it is res judicata as to all of the issues titles and grounds of recovery and defense set up and litigated and decided between these parties in that suit, whenever the same may arise in other suits about other property between the same parties or their proxies.

The rule of law is that where the property in dispute is the same, not only every question of law and fact material to the case that was controverted and decided, but even those questions that might have been decided are concluded by the former judgment.

But where the property claimed is different from that claimed in the former suit, then the "judgment in the prior action operates as an estoppel only as to those matters in issue or points controverted upon the determination of which the finding or verdict was rendered.

157 U. S. 683;
101 U. S. 638;
124 U. S. 225;
24 How. 333;
7 Wal. 619;
94 U. S. 351.
Black on Judgments, p. 739.

What we contend for is that the status and strength of the same titles now relied upon by both parties in this case were tested and settled in that suit and that that judgment is conclusive as to the strength of these titles when set up against

each other in any other case between the same parties in the same capacity.

Had either party raised other issues than those raised in the former suit, as, for instance, title by prescription or by tax sale, or by purchase from a stranger, or from his antagonista's author, the former judgment would not be res judicata as to any of such issues, because they were not raised or decided in such former judgment.

But it so happens in this case that no issues are in fact raised that were not raised and decided in the former case. The judgment, therefore, in that case being res judicata of all these issues, they are not open to controversy in this case.

The same thing happened in the case of thhe **Southern Pacific Railroad Company vs. United States**, 168 U. S. 1 (already cited). In that case both claimed certain lands. In a former suit or suits, the same parties had claimed other lands under the same respective titles. No issues were raised that were not raised and decided in the former suits. The judgments in the former suits were plead as res judicata as to these issues and the plea was sustained.

So in the case at bar; the titles and issues are precisely the same as in the former case.

The Railroad Company sets up the same title; the Smith heirs set up the same. The Railroad Company sets up the same plea of res judicata, based upon the same judgment of the State Court in the case of **State vs. Smith**, that it set up in the former case.

Upon all these issues there was verdict and judgment for the Smith heirs, and we submit that such verdict and judgment are res judicata of these issues in this suit; and there being no other

issues in this suit said judgment is res judicata of this case, and if due effect had been given to the judgment of the Federal Court in said suit, No. 80, by the State Court it would have so held.

Some effort has been made to construe the judgment of the Supreme Court of the United States in dismissing said suit, No. 80, for want of jurisdiction as in some way limiting the effect of the judgment in that case. If we were claiming that that judgment finally awarded the whole of Silver Lake to us, there would be something in the contention, but we are not claiming that; but claiming simply that the questions, titles and issues raised litigated and decided in that case by these parties cannot be again litigated between them, and there is not one word or hint in the opinion of this Court that militates against the finality of that judgment as to the issues therein determined. See the opinion in 135 U. S. 195.

Counsel for the defendant in error contend that the Supreme Court of the State decided the case upon the effect to be given to the judgment of the State Court in the case of **The State vs. Smith** and upon the effect to be given to the Act of the Legislature of May 14, 1853, relative to the sale of shallow lakes, and that therefore no Federal question was involved. But before reaching these questions the Court had to decide and did decide upon the effect to be given to the judgment of the Federal Court in the suit of **Smith Heirs vs. Geo. A. Turner**, No. 80, already so often mentioned, and denied to the plaintiffs in error the rights and immunities claimed by them under the same. Had due effect been given to said final judgment, the Court would have found that every issue before it in the present case had been finally decided between the

same parties in the former suit in favor of the Smith Heirs, and had become as to them the thing adjudged and conclusively true, whether true as to the rest of the world or not.

We submit that it is clear that a Federal question going to the very heart of the case is presented for the decision of this Court.

Respectfully submitted,

A. H. LEONARD.
E. W. SUTHERLIN.
W. P. HALL.
Counsel.

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JAMES H. McKENNEY, Clerk

In Supreme Court of the United States

OCTOBER TERM 1904.

No. 233.

A. H. LEONARD ET AL.

Versus

V., S. & P. R. R. COMPANY ET AL.

In Error to Supreme Court of the State of Louisiana.

A. H. LEONARD,
Of Counsel for Plaintiffs in Error.

In Supreme Court of the United States

OCTOBER TERM 1904.

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Versus

V., S. & P. R. R. COMPANY ET AL.

In Error to Supreme Court of the State of Louisiana.

A. H. LEONARD,
Of Counsel for Plaintiffs in Error.

BRIEF AND ARGUMENT OF DEFENDANTS.

The Vicksburg, Shreveport and Pacific Railway Company instituted this suit against Tibbs et al to recover lots 1, 2, 3, 4, 5, 6, 7, 8 and 9 of section 31, township 18 north, range 13, containing 178 80-100 acres (usually known as Silver Lake) less 35 18-100 acres of same recovered by R. N. Smith et al, as shown by judgment in suit R. N. Smith et al. vs. George

A. Turner, et al, No. 80, docket United States Circuit Court, Western District of Louisiana.

The railroad company claims title to said land through grant from the United States by Act approved July 3, 1856, granting lands to the State of Louisiana to aid in the construction of railroads in said States duly accepted by the grantee.

That said land was included in the approved selections made under authority of said act, and that its title was further acquired through divers conveyance mortgages, decrees and sales and by the completion of the railroad through the parish of Caddo before June 3, 1866.

Tibbs et al disclaimed title disclosed the fact that they held at tenants of R. N. Smith and other heirs of W. W. Smith, deceased, and of George R. Wilson and A. H. Leonard, vendees of said heirs. The heirs of Smith, R. N. Smith et al, and the said Wilson and Leonard were substituted as defendants in the court *a qua*, and *in limine* pleaded.

RES JUDICATA AND ESTOPPEL.

By this plea defendants in court *a qua* set up as a bar to plaintiff's action the judgment referred to in petition of plaintiffs in court *a qua*, rendered in suit R. N. Smith et al vs. George A. Turner et al, No. 80 on docket of the Circuit Court of the United States, Western District of Louisiana. T. p. 71.

They aver that the heirs of W. W. Smith (the defendants in court *a qua* with exception of A. H. Leonard and Geo. R. Wilson, who acquired from said heirs) instituted suit No. 80 on docket of the Circuit Court of United States for the Western District of Louisiana against George A. Turner, alleg-

ing and claiming ownership of the entire tract known as Silver Lake and praying to be restored to possession of about forty acres thereof illegally held by Turner.

That Turner disclaimed title and averred held as tenant of the Vicksburg, Shreveport and Pacific Railroad Company (the plaintiff in court *a qua*), thereupon said company appeared interposing pleas in bar and answered claiming possession and ownership of the entire tract known as Silver Lake and setting up their title to said tract as a whole.

That on final hearing a judgment was rendered in suit No. 80 on all issues therein raised in favor of the plaintiffs therein, the said heirs of W. W. Smith, decreeing them to be the owners of the land in controversy in said suit and restoring them to possession of same. That under said judgment the said heirs of W. W. Smith (defendants in court *a qua*) were put in possession of said land. That said judgment is final and has the force and effect of *res judicata* as against all parties to said suit and as against the claims of the V. S. & P. R. R. Co., and estops the said company from asserting the claims now made by them. That after said judgment became final the said Leonard and Smith acquired from the heirs of W. W. Smith an undivided interest in the entire Silver Lake tract and entered into possession of same.

This exception being overruled, defendants in court *a qua* answered.

ANSWER.

Without prejudice to their plea of res judicata and estoppel and reiterating same, defendants deny all allegations of plaintiffs'

petition except as herein admitted. They admit plaintiffs are not owners of 35 18-100 acres of land recovered by R. N. Smith and others, as shown by judgment rendered in suit R. N. Smith et al vs. G. A. Turner et al, No. 80, docket United States Circuit Court, Fifth Circuit, Western District of Louisiana, and admit that said 35 18-100 acres is a portion of the tract of land described in plaintiff's petition and usually known as Silver Lake.

They also admit that they are in possession of the entire tract.

They aver that they own and possess same as heirs of W. W. Smith and as vendees of said heirs, and were put in possession of same by the marshal of the Western District of Louisiana under writs of possession issued in suit No. 80 and in suit No. 139 on docket of the said United States Court, entitled R. N. Smith vs. Jake Ford et al, in the years 1886 and in 1889, and have ever since been in possession of same as owners.

As a peremptory exception and plea in bar to plaintiff's demand they plead res judicata and estoppel from the judgment and the record in said suit No. 80.

They aver that the State of Louisiana, through its constituted authorities, sold to W. W. Smith (since deceased) on May 14, 1853, a certain tract of land known as Silver Lake, situated in section 31, township 18, ranges 13 and 14, in the parish of Caddo, containing an area of 186 51-100 acres, including the land claimed in plaintiff's petition, at a price of $1.25 per acre, which at the time was paid into the treasury of the State by said Smith, as appears by the certificate of sale annexed and made part hereof. That afterwards on the 24th day of February, 1855, the State issued a patent for said land to said Smith, as appears by

patent annexed.

That the State claimed and acquired said land as swamp and overflowed land granted to the State by Acts of Congress of 1849 and 1850, known as the swamp-land grants, and that the State sold said land to W. W. Smith as swamp and overflowed lands, and it was at the date of passage of said acts of Congress swamp and overflowed land.

That all sales of land in Louisiana claimed as swamp and overflowed land by the state, whether made by the United States or by the state, and whether the land sold was of that character or not, were confirmed by acts of Congress approved March 2, 1855, and March 3, 1857.

That said W. W. Smith acquired title to said land both from the state by purchase and from the United States by said conformatory acts, and that his title is paramount to all subsequent claims from the government and is indefeasible.

That defendants are the just, true and legal owners of the tract of land known as Silver Lake.

That R. N. Smith and other heirs of W. W. Smith, deceased, finding one Geo. A. Turner in possession of a portion of said tract, instituted in the Circuit Court of the United States an action against him, claiming ownership of the entire tract known as Silver Lake, alleging that a portion of same, about 40 acres, was in the possession of Turner, making all the allegations hereinbefore made and praying for judgment decreeing them to be the owners of said tract and putting them in possession of that portion of it held by him. That in said suit Turner appeared, disclaimed title and declared he held as tenant of the Vicksburg, Shreveport and Pacific Railroad Company (plaintiffs herein.)

That thereupon said company was made party defendant, appeared and answered denying all allegations made by R. N. Smith and others, set up title in said suit, just as they now in this suit declare on it, and interposed various objections to the title of W. W. Smith and exceptions and pleas to the action brought by his heirs, all of which appears by the answers, exceptions and the pleadings in said suit No. 80, and the record thereof, hereto annexed and made part hereof.

That on the issues so raised suit No. 80 was tried and there was judgment in favor of the plaintiffs therein, the said heirs of W. W. Smith and against the said railroad company, decreeing the said heirs to be the owners of Silver Lake and entitled to possession of same.

That the railroad company from said judgment sued out a writ of error to the Supreme Court of the United States, which Court dismissed said writ and affirmed said judgment, which thereupon became final, and then the railroad company surrendered to the heirs of W. W. Smith all that portion of the Silver Lake tract in the possession of said company and fully acquiesced in said judgment.

Defendants aver said judgment is final and conclusive against the pretensions of said railroad company, plaintiffs herein, and defendants in said suit No. 80. That as against said company the allegations herein made are conclusively true, in consequence of the judgment aforesaid are *res adjudicata* and that said judgment is a full, complete and effective bar to any claim of ownership of said Silver Lake tract or any portion thereof on the part of said railroad company.

That on July 5th, 1888, the said R. N. Smith and other

heirs of W. W. Smith instituted suit against Jake Ford and others, some seventy-five in number, in possession of that portion of Silver Lake not held as aforesaid by said Turner, made allegations similar to those made by them in said suit No. 80 and similar prayer, to which defendants answered, and on trial judgment was rendered in favor of said heirs. That thereon writs of possession issued under which one defendant was evicted and the other defendants acquiesced and surrendered possession to said heirs of W. W. Smith, as appears by reference to the record in said suit against Ford et al. to the writ of possession therein issued and the return thereon, annexed and made part of answer.

They allege they have paid taxes on land sued for and in event of recovery by plaintiffs pray for judgment for amount of same.

By agreement questions as to taxes paid were without prejudice reserved for future consideration.

The pleadings in this case are identical with and raise precisely the same issues raised and decided in case R. N. Smith et al. vs. Turner and the V., S. & P. Ry. Co., No. 80, United States Circuit Court. The exact facts established in that case are established in this and by exactly the same evidence, and the parties to this suit were parties to the suit No. 80. It does not seem to be legally possible that questions of law and fact raised and determined in suit No. 80 can be again inquired into or passed on in this suit.

STATEMENT OF CASE.

By act of March 2d, 1849, entitled an act "To aid the State of Louisiana in draining the swamp lands therein," and by act of September 28, 1850, entitled "An Act to enable the State of Arkansas and other states (including Louisiana) to reclaim the swamp lands within their limits," Congress granted to Louisiana "the whole of those swamp and overflowed lands therein made unfit thereby for cultivation which shall remain unsold at the passage of the act." In both grants it is provided that "The proceeds of said lands, whether from sale or by direct appropriation in kind, shall be applied exclusively as far as neecssary to the purpose of reclaiming said lands by means of levees and drains."

It has been uniformly held by repeated decisions of the Supreme Court of the United States, and indeed by all courts, federal and state, in which these acts have been considered, that they are grants *in praesenti* vesting from their date title in the respective states to the lands of the character described in the grants.

The lands in controversy were, when the swamp land grants were made, have ever since remained and are now lands of the character described in the grants, being, as shown by uncontradicted evidence, low and overflowed lands, overflowed by water from Red river, except when the stage of water in that stream is low, and then the greater portion of the tract is overflowed by rain water flowing from adjacent hills.

It follows that the title to the land in controversy was vested in the state, on the 2nd day of March, 1849, and again on the 28th of September, 1850, by the swamp land grants. By act

of the General Assembly of Louisiana, No. 248, session 1852, entitled "An Act to provide for the sale of a portion of the swamp and overflowed lands, granted to the State by Acts of Congress, approved March 2nd, 1849, and September 28th, 1850, and to appropriate proceeds thereof," the register of the State Land Office was authorized to sell warrants for one million acres of land to be located on the swamp and overflowed lands donated by Congress, such warrants to be for not more than 640 or less than 40 acres, and to be sold for not less than one dollar and twenty-five cents per acre; to procure plats and maps of all the swamp lands donated to Louisiana; to enter on same and in a book to be by them kept an entry of all such lands sold, with name of purchaser and price paid.

This act expressly provides (section 7) "That the proceeds of sale of lands or of warrants shall be a special fund for leveeing and draining."

This act formally accepted the grants made by Congress and by it the state, as good faith required, expressly appropriates all moneys accruing from sale of lands donated, to the purpose in aid of which they were granted. By subsequent acts passed in 1852 and 1853 the General Assembly provided for extensive works of leveeing and draining to be paid for out of proceeds of sale of public lands. The land in controversy—Silver Lake—was in 1838 surveyed by United States surveyors and copies of their maps and plats with field notes were on file in the State Land Office as early as January 27, 1840. Being overflowed land granted to the state by Congress, the sale of which was directed by Act 248 of 1852, it was the duty of the state land officers to sell same at price fixed by the act to anyone applying

to purchase.

By Act of 1853, No. 248, the General Assembly of Louisiana authorized the Register of the Land Office to sell the shallow lakes in this state the area of which has been ascertained by survey and which are susceptible of being reclaimed by draining and leveeing.

As has been stated, on March 19, 1838, the Department of the Interior approved a plat or map of Silver Lake showing that said tract has been surveyed, meandered and traversed by United States surveyors. See Printed Transcript, 2nd map, between pages ——, and field notes, p. 258.

The certificate of Crenshaw, State Register, of date June 10, 1853, shows this map with the field notes were then on file in the State Land Office. See map p. 258. This certificate does not show when they were put on file but it is shown on map, 2nd map p. 244 (see top map on right) that it was received January 27th, with surveyor-general's letter of January 15, 1840.

The area of Silver Lake is not marked on the map, but the tract had been meandered, traversed and platted and field notes given from which the area could be readily ascertained by any surveyor, or indeed by anyone at all familiar with mathematics.

That such area was ascertained prior to May 15, 1853, is certain. On that date the State Register certified that W. W. Smith had purchased Silver Lake, containing 186 57-100 acres, at price of $1.25 per acre. See certificate, T. p. 256. This purchase was made with a land warrant issued by the state under Act 248 of 1852. On May 24, 1855, the state issued to

W. W. Smith a patent to the land purchased by him. T. p. 257.

In this patent it is recited that Smith had purchased the land thereby conveyed to him on May 14, 1853, with warrant No. 1. This warrant was issued under Act 248 of 1852. The land sold to Smith could not have been purchased with a warrant of any other kind or class—the only other land warrants issued by the State prior to May 14, 1853, being those issued under Act No. 91 of 1844, which on their face were receivable only for lands granted to the State by Congress for internal improvements and seminaries.

It is stated in the patent that " W. W. Smith had purchased with warrant No. 1 a certain shallow lake known as Silver Lake, situated in the parish of Caddo, in township 18, north of range 13 and 14 west, containing 186 57-100 acres, according to the official plat of the survey of the said lands, returned to the State Land Office by the Surveyor of the United States for the State of Louisiana, which said tract has been purchased and paid for at $1.25 per acre." The description in patent of tract sold Smith as a certain shallow lake known as Silver Lake cannot affect the real character of the tract. It is made certain by the uncontested evidence adduced in this cause, that the tract acquired by Smith was low land overflowed from Red river, except when that stream was low, and then overflowed for the greater part by rain water flowing from the adjacent hills, and thus made unfit for cultivation. Whether it was or not a "shallow lake," it was and yet is lands of the character described in the swamp land grants, and passed to the State under those grants.

The Department of the Interior, represented at different times by different persons, has sometimes held that "shallow lakes" properly so-called passed to the States under the swamp land grants, and has sometimes held that they did not. The latest opinion of that department is that where the maps in the United States Land Office show that the United States surveyors have meandered what on such maps appears to be a body of water, then in the absence of any subsequent survey made by the United States, the Department declines to take any action whatever with regard to such tract, and leaves it to the State courts to determine the title to same.

In the only case in which the question whether or not "shallow lakes" passed to the States under the swamp land grants was presented to a court, it was held that such lakes were overflowed lands of the character stated in said grants, and under them became vested in the States at the date of the grants. Indiana vs. Milk, Federal Reporter p. ....

Congress, by the swamp land grants, and the State, by Act 248 of 1852, dedicated all the swamp and overflowed lands in Louisiana and all moneys accruing from sale of same to the purpose of reclaiming those lands by means of levees and drains.

On the 28th day of September, 1850, the title to the land in controversy was by the United States irrevocably vested in the State. Thereafter the title of the State could not be affected by any action or legislation of the General Governmnet. On May 14, 1853, the title to the land in controversy was by the State vested in W. W. Smith by certificate, and on May 24, 1855, by patent. His rights so vested could not be affected by

any subsequent State action or legislation.

On June 3rd, 1856, Congress granted to Louisiana in aid of the construction of a railroad from the Texas line via Greenwood, Shreveport and Monroe to a point on the Mississippi river opposite Vicksburg, every alternate section of land designated by odd numbers for six sections in width on each side of such road. "Provided, that any and all lands heretofore reserved by Act of Congress for purposes of aiding in any object of internal improvement or for any other purpose whatsoever were reserved from the operation of this Act."

As was said by the Supreme Court of the United States in case Railroad Company vs. Fremont County, 9 Wall. 89-94: "These reservations clearly embrace the previous grant of the swamp and overflowed lands for the purpose of enabling the States to redeem them and fit them for cultivation by levees and drains." Even though this reservation had not been expressly made, in Act of June 3rd, 1856, it was operative by effect of law. The grants of 1849 and 1850 being grants in praesenti, vesting from their date title in the State to all swamp and overflowed lands therein—the title of the United States was by these grants immediately divested and such lands ceased to be part of the public domain.

Nevertheless the lands in controversy were certified to the State by the Department of the Interior in aid of the construction of the railroad designated in Act of June 3, 1856. But this certificate was given subject to all of the conditions of Act of June 3rd, 1856, and subject also "to any valid interfering rights which may exist to any of the tracts embraced in the list of lands certified."

Swamp lands were reserved from the grant in aid of railroads, and W. W. Smith had acquired "valid interfering rights" before June 3rd, 1856.

On December 3rd, 1857, the State instituted in the district court for Caddo Parish a real action against W. W. Smith to annul the entry and patent issued to W. W. Smith for Silver Lake,

1—Because the law under which entry was made had not been promulgated at date of entry.

2—Because the lake had not at the time of entry been legally surveyed, nor had the surveys been recognized by the State.

3—Because the patent was issued in error.

To this action W. W. Smith excepted, his exception was maintained in the district court, but on appeal was overruled by the State Supreme Court at its July term, 1858, and the cause was remanded to the district court.

W. W. Smith died October —, 1858. On the 25th day of October, 1858, John W. Smith applied to be, and was subsequently appointed, administrator of the succession of W. W. Smith.

In his petition John W. Smith names the heirs of W. W. Smith, viz: Jas. F. Smith, brother of deceased, and the minor children of John K. Smith, deceased, also a brother of W. W. Smith, represented by their mother, all residents of Shelby county, Kentucky, and prays for the appointment of counsel to represent the absent heirs, which was done. W. O. Crain was appointed attorney to represent the absent heirs and accepted the appointment. T. p. 286.

On November 30, 1858, John Brown filed in the district court of Caddo Parish a petition setting forth that he had been by the court of Shelby county, Kentucky, appointed guardian of the minor heirs of John K. Smith, deceased, brother of W. W. Smith, also deceased; that his wards are heirs at law of W. W. Smith, and inherited one-half of his estate, the other half being inherited by James Smith, of Shelby county, Kentucky.

That it is important that the said guardian be recognized as guardian or tutor of said minors to take possession of their property. He prays that he be recognized and that a family meeting of relatives and friends be assembled, etc.

A family meeting was held, who advised as follows: That John Brown administer the property of his said wards in the parish of Caddo, on giving bonds and taking oath as tutor. That he accept for his wards the succession of W. W. Smith, with benefit of inventory, etc., etc.

The proceedings of this meeting were homologated, John Brown was appointed tutor of said minors; he took the oath and gave bond and an undertutor was appointed and qualified on December 1st, 1858. T. 238-244.

On February 14, 1859, in case State vs. Smith, the State filed a petition of revival, suggesting the death of W. W. Smith, praying for citation to John W. Smith, administrator of W. W. Smith, and for service upon all other legal representatives. No service was made. John W. Smith, administrator, waived citation and as administrator filed an answer, averring W. W. Smith to be owner of the land in controversy by virtue of purchase from the State according to law, and a patent issued to

him. T. 264.

On November 20, 1860, judgment was rendered by the district court of Caddo Parish in the case of State vs. Smith, annulling entry and patent issued to W. W. Smith. John W. Smith, administrator, applied for and obtained an appeal to the Supreme Court, T. 280, and gave an appeal bond. T. p. 283.

This appeal was pending in the Supreme Court on the 14th day of August, 1866. The minutes of the Court showing that on that day in case of State of Louisiana, appellee, vs. W. W. Smith, appellant, No. 53, an answer was filed and case continued. T. p. 287.

On the 2nd day of July, 1867, John W. Smith, administrator of succession of W. W. Smith, deceased, filed his final account as such administrator.

On the 3rd day of August, 1867, that account was by judgment homologated and approved, John W. Smith was discharged from the further administration of the succession of W. W. Smith, and his bond as such administrator was cancelled. T. 288.

At the date of this judgment the appeal in the case of State vs. Smith was still pending in the Supreme Court of the State, and on the 7th day of August, 1867, it appears by the minutes of the Court that the appeal was dismissed by consent.

There were no parties to consent to dismissal and in the absence of parties no action in the cause could be taken except to revive the cause. In that cause the succession of W. W. Smith had been, if represented at all, represented only by John

W. Smith, administrator, and as *pending* the appeal John W. Smith was discharged from his office as administrator and his bond was cancelled, there was no longer any party defendant in the cause before the Supreme Court, and until proper parties were made the cause could not be dismissed. The appeal is still pending, and it follows that the judgment appealed from is not *res judicata.*

In the year 1885 the heirs of W. W. Smith found that Silver Lake was in the possession of quite a number of persons, tenants of the Vicksburg. Shreveport and Pacific Railroad Company, among others one George A. Turner. Desiring to regain possession of their property, and being by the law of Louisiana required to bring a petitory action (at common law action in ejectment) against the person in actual possession, Robert N. Smith and the other heirs of W. W. Smith, on November 5th, 1885, instituted such an action in the Circuit Court of the Western District of Louisiana against the said Turner. These heirs alleged:

That the State of Louisiana, through its constituted authority, sold to W. W. Smith, on May 14th, 1853, a certain tract of land known as Silver Lake, situated in section 31, township 18, ranges 13 and 14, in the Parish of Caddo, containing 186 57-100 acres, at the maximum price of $1.25 per acre, which at the time was paid into the treasury of the State by the said W. W. Smith, as shown by the certificate of sale annexed and made part of their petition;

That after said sale the State, through its constituted authorities, did, on the 24th day of February, 1855, issue a patent

for said tract of land to the said W. W. Smith, as is shown by the patent annexed to and make part of their petition;

That the State of Louisiana acquired said tract as swamp and overflowed land granted to the State by Acts of Congress of 1849 and 1850, and that the State sold said land to W. W. Smith as swamp and overflowed lands;

That all sales of land in Louisiana claimed as swamp and overflowed lands by the State, whether made by the United States Government or by the State, and whether the land sold was of that character or not, were confirmed by Act of Congress of March 2nd, 1855, entitled "An Act for the relief of purchasers and locators of swamp and overflowed lands";

That said Act was extended to sales made after its passage and continued in force by Act of Congress of March 3rd, 1857, to confirm all selections of swamp and overflowed lands by the several States under the Acts of Congress of 1849 and 1850;

That the said Act of Congress of March 2nd, 1855, for the relief of purchasers and locators of swamp and overflowed lands confirmed the title of the said W. W. Smith to said tract of land known as Silver Lake, whether said land belonged to the State of Louisiana under the swamp land grants of Congress or whether it belonged to the United States;

That W. W. Smith acquired a title to said land, both from the State of Louisiana and the United States, by purchase from the State and by confirmation of Act of Congress, which title is paramount to all subsequent claims from the government and is indefeasible under the Act of confirmation of the 2nd of March, 1855;

That they are the just, true and legal owners of the tract known as Silver Lake, which is illegally withheld from them and a part of which, containing 40 acres or more, is in the possession of George A. Turner, who refuses to deliver the said part of said land to petitioners, and

That the said part of said land is worth $600.

They pray for citation to Turner for judgment for the recovery of said tract of land in his possession, with its revenues, etc.

Turner disclaimed title, averred that he possessed a *portion* of the property described in plaintiff's petition as tenant of the V., S. & P. R. R. Co. Thereupon that company was made defendant in place of Turner and was cited.

The railroad company first excepted to the capacity and the right to sue and stand in judgment of the plaintiffs.

This exception being overruled, the railroad company interposed an exception and plea of *res judicata*, averring:

That in a suit entitled The State of Louisiana vs. W. W. Smith, No. — on the docket of the district court of Caddo Parish, Louisiana, filed ——, 1857, defendant put at issue the validity and legality of his title to the land described in plaintiff's petition, under and by virtue of the certificate and patent described in said petition, and upon a final hearing judgment was rendered in said suit decreeing said certificate and patent null and void, decreeing the cancellation of same, ordering them to be delivered to the State;

That plaintiffs in this suit, the Heirs of W. W. Smith, are bound by the judgment in said suit which is to them *res judicata*. The railroad company then answered denying all the

allegations of plaintiff's petition and averring:

That the sale or entry of said land as set forth in petition was cancelled by the Register of the State Land Office on the 10th day of June, as appears by the record of that office, which cancellation was duly notified to W. W. Smith;

That said sale, entry and patent are null and done without authority of law, in this, to-wit:

1. Because the law under which said entries were made had not been promulgated at the date of the entry.

2. Because said land had not at the time of said entry been legally surveyed nor had any survey thereof been recognized by the State of Louisiana.

3. Because the patent to said land was issued by the Register in error of the fact that said entry had been cancelled before the law authorizing the sale of shallow lakes had been promulgated.

That said land was never selected by the State as swamp and overflowed lands, has never been reported to the Commissioner of the General Land Office and never approved as such by the Surveyor-General or by the Secretary of the Interior or Land Commissioner, was never listed or returned by the Secretary of the Interior to the State of Louisiana as swamp and overflowed lands, has never been acquired by the State as such, does not and never did belong to that class of lands, but to that other class of lands known as shallow lakes, and therefore not embraced in the grant from the United States Government under the Acts of 1849 and 1850 of swamp and overflowed lands.

That the defendant railroad company is owner of said land

by good and sufficient title by grant from the United States Government under Acts of Congress approved June 3, 1856, to the State of Louisiana to aid in the construction of railroads in that State which was accepted by the State for that purpose, all the requirements of said grant having been complied with by the State and by the V., S. & P. R. R. Co. the land described in plaintiff's petition being embraced in said grant was acquired by said railroad company and duly certified or patented as belonging to the said company by the United States and which has been legally sold and transferred by said railroad company to defendant company.

The prayer is that plaintiff's demand be rejected and for judgment decreeing defendant company to be the owner of said land and quieted in possession thereof.

On these issues there was judgment in favor of plaintiffs, R. N. Smith et al., and against the defendant, the V., S. & P. R. R. Co., decreeing plaintiffs to be the owners of the land in controversy, particularly described as shown on map of W. R. DeVoe, surveyor, and overruling the plea of *res adjudicata.*

From this judgment a writ of error was sued out to the Supreme Court of the United States, which was by that Court dismissed for want of jurisdiction, it being held that the amount involved in such judgment was less than $2000. Thereupon the railroad company surrendered to the Heirs of Smith that portion of Silver Lake which had been in possession of their tenant, Turner.

R. N. Smith and the other heirs of W. W. Smith then instituted suit in said Court of the United States against the other tenants of the V., S. & P. R. R. Co., some seventy-five in num-

ber, each holding portions of the tract known as Silver Lake. See record R. N. Smith et al. vs. Jake Foard et al. In this suit there was judgment in favor of the Heirs of Smith decreeing them to be the owners of the Silver Lake tract and entitled to possession of same. On this judgment a writ of possession issued under which the Heirs of W. W. Smith were put in possession, thus acquiring possession of the entire tract, which they ever since held.

RES ADJUDICATA.

The attention of the Court is again directed to the fact that the exact issues raised and decided in the suit of R. N. Smith et al. vs. The V., S. & P. R. R. Co. are again raised in the suit of The V., S. & P. R. R. Co. vs. R. N. Smith et al., the case at bar. This being the fact, it is difficult to see how those issues can be re-examined, considered and determined in the case at bar. The final judgment rendered in suit No. 80 is an effective bar to the present action.

In that suit the Heirs of W. W. Smith, setting up their title fully, aver they own the entire tract known as Silver Lake, a portion of which, about 40 acres, is in possession of Turner. The Vicksburg, Shreveport and Pacific Railroad Company, made defendant, attacked the title so set up, denied the allegation made by the Heirs of Smith, alleged that the company owned and possessed the entire tract under a title derived from the United States Government by Act of Congress of June 3, 1856, granting lands to the State in aid of railroads. The title to the entire tract known as Silver Lake so set up by the Heirs of Smith and the title so set up to the entire tract by the railroad

company was necessarily inquired into and passed on in the suit No. 80. As owners of the entire tract by indivisible title to the whole, each party claimed to own each and every portion of the whole. It was necessary to determine who held title to the whole in order to determine who owned a part of the whole. The judgment in suit No. 80 is for a portion of the Silver Lake tract, but the ownership of that portion could not be determined without passing upon the titles to the entire tract set up respectively by the plaintiffs and by the defendant in that suit. Both titles were considered and determined by that judgment.

The questions raised and determined in the suit No. 80 are identically raised in the suit at bar. Therefore the plea of *res adjudicata* bars the present action.

It would bring the law into contempt, it would be a public scandal if in suits between the same parties, each claiming title to a whole, in one it should be held that the title of plaintiff was good and in another that the title of defendant was good. No such result is legally possible.

Whenever the same question recurs, no matter under what form presented, between the same parties, the plea of *res adjudicata* estops. 35 A. 553; 31 A. 450, 658; 12 A. 197.

If the first judgment settled the question of title against me by deciding that I have neither an undivided co-proprietorship or exclusive ownership whether of whole or part, no question is longer possible, and all pretension to ownership is *res adjudicata*. Marcade p. 170.

To know whether a question presented is or not a thing adjudged, take the proposition established by the first judgment.

Compare it with that which the suitor desires to have established. If the second proposition when compared with the first does not contradict and may co-exist with it, then the question has not been decided. If, on the contrary, the two propositions are contradictory and incompatible, the question presented is a thing adjudged. 5 Marcade p. 159.

The proposition established by the judgment in suit No. 80 was and is that the Heirs of W. W. Smith have a valid title to the entire tract known as Silver Lake, and therefore a valid title to each and every portion of same, including a portion in the possession of the V., S. & P. R. R. Co., through their tenant, Turner, and that the title to the entire tract set up by the railroad company was invalid for the whole and therefore invalid for a part of the whole.

The proposition which the railroad company now desires to have established is that their title to the whole is good, and that they are therefore entitled to a part of the whole, and that the title of the Heirs of W. W. Smith is not good for the whole and therefore invalid for a part of the whole. The second proposition contradicts the first and cannot co-exist with it. Under the same title to the whole, the Heirs of Smith cannot own one portion of Silver Lake and not be owners of all other portions of that tract. Under the same title to the whole held bad for a part, the title to the whole is necessarily held invalid, and it would be a contradiction to say that the title to the whole is bad for one part of the whole and good for another part.

Marcade says further: "If I demand a portion divided or undivided of an immovable, can I, after having been defeated, demand the entire immovable? No, for it has been adjudged

that I have not even a portion and the second judgment would be the negation of the other." Vol. 5, pp. 159-160.

The estoppel extends to every material allegation or statement which having been made on the one side and denied on the other was at issue in the cause and decided therein.

In Herman vs. Louisiana Institute, 34 A. 814, the Supreme Court of Louisiana says: "No principle of the law is more inflexible than that which fixes the absolute conclusiveness of a final judgment upon the parties and their privies. Matters once determined in a court of competent jurisdiction may never again be called in question by parties or privies against objection. The estoppel extends to every material allegation or statement which, having been made on the one side and denied on the other, was at issue in the cause and was determined therein."

A judgment has the force and effect of *res adjudicata* as to all matters set up in the pleadings. Erwin vs. Bissell, 17 La. 92. See also 2 A. 462; 14 La. 576; 19 La. 318; 5 N. S. 664; 11 M. 607; 14 La. 233; 5 M. N. S. 170.

In New Orleans vs. Citizens Bank, 167 U. S. 371, 407, the Supreme Court of the United States, Mr. Justice White being their organ, held: The estoppel resulting from the thing adjudged does not depend upon whether there is the same demand in both cases, but exists even although there be different demands, when the question upon which the recovery of the second demand depends has, under identical circumstances and conditions, been previously concluded by a judgment between the parties or their privies. This the Court say "Is the elemental rule stated in the text books and enforced by many decisions."

Judgment in action for a part only of an entire indivisible

demand bars action on another part of same demand. 96 U. S. 430; 7 Wall. 619; 142 U. S. 396; 166 U. S. 506.

A fact or controversy once decided by a court of competent jurisdiction cannot be re-examined in suits between same parties or privies. 1 Howard 134; 4 Howard 467; 2 Black 606.

Decree is conclusive whenever the same matter is brougth into controversy. 3 Wheaton 246; 6 W. 109.

Judgment as to issues decided is conclusive upon parties. 9 Peters 8; 106 U. S. 578; 117 U. S. 514; 99 U. S. 261; 139 U. S. 331.

A judgment is conclusive not only as to *res* of case, but to all further litigation between the same parties touching the same subject matter, though the *res* itself may be different. Where parties are identical and title involved is the same, a judgment as to part is conclusive as to title to whole. Beloit vs. Morgan, 7 Wall. 621.

If a judgment be on pleading and proof the estoppel extends not only to what was decided, but to all that was necessarily involved in the issue. 142 U. S. 210; 24 Howard 333; 5 Wall. 580; 91 U. S. 526; 94 U. S. 696.

A decision in respect to any essential fact or question in one action is conclusive between the parties in all subsequent actions. 166 U. S. 517-518; 94 U. S. 351; 101 U. S. 638; 103 U. S. 66; 144 U. S. 610; 152 U. S. 252; 137 U. S. 683. See also a recent case, Lafourche vs. Terrebonne, 49 A. 1331, in which the State court considered and affirmed authorities herein cited.

In the light of these authorities how can anyone fail to see that the plea of *res adjudicata* should be maintained? The

learned counsel of plaintiffs say that the judgment is only for a portion of the Silver Lake tract, viz: 35 18-100 acres, specifically described in judgment, and is therefore conclusive only as to that 35 18-100 acres. They say nothing more and can say nothing more. Counsel forget that when res adjudicata is pleaded the judgment pleaded must be read in connection with the pleadings presenting the issues and questions which that judgment determined. When this is done it becomes clear beyond all doubt that it was determined by the judgment in suit No. 80 that the title therein set up by the Heirs of W. W. Smtih to the entire tract known as Silver Lake was good and perfect, and that the title to the entire tract set up by the railroad company was worthless.

When a suitor alleges that by virtue of a title to a whole thing he is entitled to a part of the whole, the thing demanded is the judicial recognition of his title to the whole. Without such recognition he cannot be entitled to a part of the whole.

But the text writers and the decisions of the courts hereinbefore referred to make all argument on our part unnecessary, and indeed uncalled for.

We submit that the plea of *res adjudicata* should be maintained.

MERITS.

The Railroad Company deduces title to land in controversy from the Act of Congress of June 3, 1856, granting lands to the State of Louisiana in aid of railroads.

From the certificate of the Secretary of the Interior and from a grant made by the State in 1857.

This certificate includes the land in controversy, but it is recited in the certificate that it is given under and subject to all the conditions of Act of June 3, 1856, and subject also "to any valid interfering rights which may exist to any part of the tracts embraced in the list of lands certified."

If the lands in controversy were not included in the grant of June 3rd, 1856, the Department of the Interior could not certify them to the State for the benefit of the railroad so as to give the State title, and if anyone had, prior to June 3rd, 1856, acquired any valid interfering rights in and to said lands, they did not pass under the certificate by its express terms.. The lands in controversy were not granted by Act of June 3rd, 1856. On the contrary, such lands were expressly reserved by the Act itself "from the operation of the Act." It is an uncontested fact that the lands in controversy were in 1849 and 1850 and have ever since remained lands of the character described in the swamp land grants of March 2d, 1849, and September 28th, 1850. It appears from the Act of June 3rd, 1856, that lands previously granted by Congress were reserved from the operation of the Act, and it has been repeatedly held by the Supreme Court of the United States in a line of decisions beginning with Railroad vs. Fremond County, 9 Wall. 89, that the reservations in Act of June 3rd, 1856, clearly embrace the previous grant of the swamp and overflowed lands.

Moreover, prior to June 3rd, 1856, a valid right to the lands in controversy was vested in W. W. Smith. He purchased it from the State in 1853, and a patent therefor was issued to him by the State in 1855.

That the swamp land grants are grants *in praesenti*, vesting

in the State from the date of their passage, title to all lands described in them; and that such lands cannot be acquired under Act of June 3rd, 1856, is settled by repeated and harmonious decisions of the Supreme Court of the United States, the first being that made in Railroad Company vs. Smith, 9 Wallace 95. That case is thus stated by the Court: "The railroad company brought ejectment proceedings against Smith in a State court of Missouri to recover certain lands, deducing title from an Act of Congress approved June 10th, 1852, granting lands to Missouri in aid of railroads (the provisions of which are identical with those of Act of June 3rd, 1856, in favor of Louisiana."

"The Legislature of Missouri in September, 1852, accepted the grant and by statute vested the land granted in the railroad company.

"The title of defendant was deduced from the swamp land grant approved September 28, 1850.

"On trial below defendant introduced evidence tending to prove that the lands in suit were wet and unfit for cultivation at the date of the swamp land grant of 1850. *This was his title.* No evidence was introduced tending to show that the land in suit was ever certified as swamp land by the Secretary of the Interior or that same was ever patented as such to the State. Nor was this pretended."

It will be observed that defendant in case cited was a mere squatter without any title from the State, and that his possession was not shown to have antedated the grant by Congress and the State to the Railroad. His sole contention was that the lands being lands conveyed to the State by the swamp land grant of 1850, could not be disposed of by any subsequent Act of Con-

gress, and that he being in possession could not be dispossessed by anyone claiming under a subsequent Act. This contention was sustained. The Court say: "It is not necessary to defeat the title under the railroad grant to show that all the steps prescribed by Congress to vest a complete title in defendant under the swamp land grant have been taken. *It is sufficient to show that this land now claimed under the railroad grant was reserved out of that grant, and this is done whenever it is proved by appropriate testimony to have been swamp and overflowed land as described in Act of* 1850."

The Court holds that the swamp land grant was a present grant, that all lands desecribed therein were granted to the State and *have remained so granted ever since.* That such grant was protected by positive reservation in the railroad grant. That when a party claiming under the railroad grant sues to recover a particular piece of land which is excepted out of the grant by appropriate language, it is competent to show by parol that it was of the class covered by the first grant and excepted from the second, namely, so swampy, overflowed and wet as that the major part of the tract was unfit for cultivation.

The Court say: "By the second section of the Act of 1850 it was made the duty of the Secretary of the Interior to ascertain this fact and furnish the State with evidence of it. Must the State lose the land, though clearly swamp land, because that officer has neglected to do this? *The right of the State did not depend on his action,* but on the Act of Congress, and could not be defeated by his *delay or failure* to ascertain and make out lists, etc. The matter to be shown (i. e. the character of the land) is one of observation and examination, and whether aris-

ing before the Secretary whose duty it was primarily to decide it or before the court whose duty it became because the secretary had failed to do it. This was clearly the best evidence to be had and was sufficient for the purpose.

"Any other rule results in this, that because the Secretary of the Interior has failed in discharging his duty in certifying these lands to the States, they therefore pass under a grant from which they are excepted beyond doubt, and this when it can be proved by testimony capable of producing the fullest conviction that they were of the class excluded from the railroad grant. *The State Court did not err in admitting verbal testimony.* The judgment in favor of defendant Smith is affirmed."

The position of the defendants in the case at bar is much stronger than that of defendant in the case just cited. He held no title from the State. He had acquired no right to the land in his possession prior to the passage of the Act of Congress granting aid to railroads. In the case at bar long prior to that Act the State of Louisiana had accepted the swamp land grants and dedicated the lands granted to the purpose for which they were granted, the construction of levees and drains (Act 258 of 1852) and prior to the said grant to railroads the lands in controversy were sold to W. W. Smith, under whom defendants hold title and possession.

The opinion in case cited has never been overruled, and it has been affirmed in subsequent decisions.

These decisions are referred to in Wright vs. Roseberry, 121 U. S., and are held to establish these propositions:

1—The grant of swamp and overflowed lands to the several

States was in praesenti, passing title to lands of the character therein described from its date, and requiring only identification thereof to render such title perfect.

2—Such identification by the Secretary of the Interior is conclusive against collateral attack as being judgment of the special tribunal on which such duty was imposed.

3—On neglect or failure of that officer to make such designation, it is competent for the grantee of the State to identify the lands in any other appropriate mode to prevent their rights from being defeated.

4—It is error to hold that the certificate of the Commissioner of the Land Office is necessary to pass title to the State. The case must go back for new trial when parties will be at liberty to show whether or not the lands in controversy were in fact swamp and overflowed lands on day swamp land act took effect. If they were such lands, the grantee of the State has title.

In Tibbs vs. Wilhoit, 138 U. S. 134, these propositions are affirmed, and the Court say: "The duty of the Commissioner of the General Land Office to certify over to State swamp and overflowed lands is purely ministerial. He cannot defeat title of State by withholding certificate, nor add to title by giving certificate."

Now apply these decisions to the case at bar.

The land in controversy is of the character described in swamp land grants, title to which was vested in the State at their date. It was sold by the State to W. W. Smith. The failure of the General Land officials to certify the land to the State did not affect the title of the State vested in Smith. Those

officers could not defeat the title of the State by withholding such certificate, nor add to the title by giving certificate; and on the failure of those officers to identify the lands it is competent for the grantees of the State to identify the lands in any other appropriate mode to prevent their rights from being defeated—it is competent for them to prove the character of the lands by parol. Under these decisions it is clear that the V., S. & P. R. R. Co. has no title to these lands, and it is also clear that title to them is vested in the heirs and assignees of W. W. Smith, grantee of the State.

It is contended that these decisions have been overruled by three decisions of the Supreme Court, viz: Chandler vs. Mining Company, 149 U. S. 79; McCormick vs. Hayes, 159 U. S. 332, and Rogers Locomotive Works vs. Emigrant Company, 164 U. S. 559.

Those familiar with the decisions and with the methods of that high tribunal will receive with incredulity the assertion that a line of decisions therein rendered has been overruled by subsequent decisions, *not expressly* but by implication. Such incredulity will increase when it is known that in the opinions by which it is claimed previous decisions are overruled these previous decisions are not only not overruled expressly but are held to have been a correct exposition of the question of law and fact presented in them.

Analysis of the three cases which it is claimed overrule previous decisions will show that they do not overrule previous decisions but are differentiated from them. The judgments rendered in these cases are sound, but the judgments in previous cases are sound also.

In these three cases it appeared that land was granted to a State in aid of railroads, and in one instance in aid of a canal, that under these grants the land in controversy was by the Secretary of the Interior certified to the State; that the State accepted the grants and by patents conveyed the land in controversy to the railroads and canal, who thereupon took possession, and that persons claiming lands in controversy under titles *subsequently* made by the State sought to recover them notwithstanding the prior patent issued by the State on the ground that such lands were overflowed land. It was correctly held that the title resulting from the certificate of the State and from the patent of the State to the railroads could not be annulled or cancelled by any subsequent grantee.

That the State, by accepting the grants in favor of railroads and by conveying same by patents to the railroads, was therefore estopped from claiming lands included in patents as swamp and overflowed lands; that such estoppel extended to any subsequent grantee of the State, and that the State could not take the lands under one grant and thereafter pass to anyone a right to assert an interest in them under another and a different grant.

In Rogers vs. Emigrant Company the case is thus stated:

"The case, then, is this, the State was entitled to the lands under the Act of 1850, swamp land grant, or under Act of 1856, in aid of railroads. It was open to the State before accepting the lands under the railroad Act to insist that they passed under the Act of 1850 as swamp and overflowed lands. No such claim was made. The State primarily interested and with whom the Land Department dealt directly, accepted the lands under the

Act of 1856, and therefore as not inuring to it as swamp and overflowed land, has never repudiated its action, nor sought to have the question reopened.

"The State cannot take them under one Act, and while holding them under that Act pass to anyone the right to assert an interest in them under another Act."

It is held that by accepting the lands in controversy in Rogers vs. Emigrant Company, under the Act of 1856, and issuing patent therefor to the railroad company, the State is *thereafter* estopped and any *subsequent* grantee of the State is estopped from claiming that land under any other grant.

That is undoubtedly sound law. But it does not apply to the case at bar. Prior to the passage of the Act of 1856, under which plaintiff (the V., S. & P. R. R. Co.) claims, the State had claimed the lands in controversy as swamp and overflowed lands and had sold them to W. W. Smith as swamp and overflowed lands, and on April 24th, 1855, issued him a patent therefor. His rights to the land in controversy were on that date vested rights which could not be affected by any subsequent action on the part of the general government or of the State. He and those holding under him are not estopped by the *subsequent* action of the State.

Among the rights so vested in him by that patent is the right to identify the lands bv any sufficient evidence as against anyone seeking to eject him therefrom, if the Secretary of the Interior either neglected or failed to make such identification. That right so vested in him on the 24th day of April, 1855, is vested in those holding under him, and is protected by the Constitution of the United States.

That right so vested and protected cannot be destroyed or affected by any action to which he was not a party.

The rules laid down in Railroad vs. Smith, 9 Wallace, and in Wright vs. Roseberry, 121 U. S. govern this case, and under them there must be in case at bar judgment for defendants.

But it is claimed that the sale to W. W. Smith and the patent issued to him by the State have been cancelled and annulled by effect of a judgment rendered in case of The State of Louisiana vs. W. W. Smith.

That claim cannot be made in the case at bar.

In suit No. 80, Heirs of Smith vs. V., S. & P. R. R. Co., the railroad company pleaded that judgment as *res adjudicata* against the claim of those heirs to the tract known as Silver Lake, and that plea was expressly overruled by the judgment in said suit No. 80. It cannot be renewed in the suit at bar, the parties to both suits being the same. There is no question here whether a whole includes its parts, whether the thing demanded is or not the same. The plea interposed by the railroad company in case No. 80 was that the title to Silver Lake claimed and set up by the Heirs of W. W. Smith was null and void by reason of the judgment rendered in case of State vs. W. W. Smith. That plea was overruled and so far as the parties to the suit No. 80 are concerned, it is a thing adjudged, which as between them cannot be questioned, that the patent issued to Smith by the State and the title to Silver Lake granted him by the State were not annulled or cancelled by the judgment in case of State vs. Smith. It is surely unnecessary to submit

any argument in support of this contention, which is beyond all doubt sanctioned by the authorities hereinbefore cited on *Res Adjudicata.*

Nor is it necessary to show that the judgment rendered in the case of State vs. Smith is not a judgment having the force and effect of *res adjudicata*—but it is easy to do.

While the suit of the State vs. W. W. Smith was pending, Smith died. His death was suggested and leave granted to revive against his heirs and legal representatives. A petition of renewal was filed by the State in which citation was prayed for to John W. Smith, administrator of the succession of W. W. Smith, and to the other legal representatives of W. W. Smith. No one was cited. John W. Smith, administrator, appeared and answered.

The heirs of W. W. Smith were, when the petition of revival was filed, and had been long previously, known and represented in the State and in the parish in which the suit was pending. The action being a *real action,* on the death of W. W. Smith it became necessary to make his heirs parties. Such action could not be maintained against an administrator or against an executor, the succession not being a "vacant" succession. C. p. 122-123; C. C. 1905.

Therefore the proceedings taken in suit of State vs. W. W. Smith were after his death nullities.

But there is no final judgment in that suit which can operate as *res adjudicata.* An appeal was taken from that judgment by John W. Smith in his capacity as administrator of the succession of W. W. Smith, which was pending on the 3rd day of August, 1867. On that date the final account of John W.

Smith, administrator, was homologated. He was discharged from the further administration of the succession and his bond was cancelled by a judgment of the district court of Caddo Parish. As he alone and as administrator represented the defendant in the case of State vs. Smith, when he ceased to be administrator he could no longer represent the defendant, and in the appeal pending at date of his discharge no action could be taken thereafter except to make parties. It appears that some time after such discharge an order was entered in the pending appeal dismissing it, but this order was null and void, there being no party defendant. The appeal is still pending, and the judgment appealed from does not have the effect of *res adjudicata.*

It follows that in the case at bar the sale made to Smith and the patent issued to him must have full effect.

It may be contended that the certificate and the patent issued by the State to Smith are null and void, first, because the law under which the sale was made to Smith on May 14th, 1853, had not been promulgated at that date; and, second, because at that date the Silver Lake tract had not been surveyed, nor had the survey been recognized by the State. The second reason has no foundation in fact. As appears fully in "Statement of Case" hereinbefore made, the Silver Lake tract had been surveyed and its area ascertained. Moreover, the certificate and patent issued to Smith show on their face that the tract had been surveyed and its area ascertained.

The presumption that the land in controversy had been surveyed arising from the entry and patent exists and must

have full effect until it is *conclusively* established that no survey had been made at date of entry and patent. Cole vs. Thompson, 35 A. 1030. Such is also the jurisprudence of the Federal Courts. 7 Wheaton 212; 104 U. S. 636.

The first reason is also invalid. It assumed that the sale to Smith was made under authority of Act No. ...., session 1853.

That sale could have been made under that Act at the date of sale, but whether it could or not the land officers of the State were certainly authorized to sell land in controversy to Smith at date of sale under Act 248 of 1852. The land was swamp and overflowed land, the sale of which was directed by that Act, and Smith purchased with a warrant issued by the State under that Act.

Moreover, if it be for the sake of argument, conceded that the sale to Smith was made under Act of 1853, that such Act had not at date of certificate been promulgated, and that the certificate was null and void, the patent issued in 1855 remains in full force and effect. It is a sale. The State had Smith's money given for the purchase price of the land described in the patent. No one else had applied to purchase the land from the State. There was no reason why the State should not sell to Smith, the only applicant, and the State did sell to him, as shown by the patent long after the Act of 1853 had been promulgated.

RECAPITULATION.

The land in controversy was swamp and overflowed land at the date of the passage of the swamp land grants of 1849 and 1850 vesting from their date in the State title to such land.

The title so vested in the State was vested in W. W. Smith by patent issued February 24th, 1855.

Under such title the heirs and assignees of W. W. Smith are in possession.

The land in question being swamp and overflowed land, was expressly reserved from the grant made to the State in aid of railroads of date ..... 1856, under which the railroad company claims.

Therefore the railroad company has no title under that Act.

Nor can the railroad company claim as against heirs and assignees of W. W. Smith title by estoppel, because while the action of the State in accepting the land under Act of 1856 and conveying it to the railroad company *thereafter* estopped the State and all *subsequent* grantees of the State from claiming said land. W. W. Smith was not a *subsequent* grantee. His title was acquired long before the passage of the Act in aid of railroads and the conveyance by the State to the railroad.

On the merits there should be judgment for plaintiffs in error.

Respectfully submitted,

A. H. LEONARD,

Of Counsel for Plaintiffs in Error.

In United States

Supreme

October Term, 1908

No. 833

A. H. LEONARD, G. E. WILSON, R. N. SMITH, [illegible]

PLAINTIFFS IN ERROR,

vs.

THE VICKSBURG, SHREVEPORT & PACIFIC [illegible]
ROAD COMPANY,

J. H. McCORMICK, Receiver,
and C. C. HARVEY, President,

DEFENDANTS IN ERROR.

SUPPLEMENTAL BRIEF OF
PLAINTIFFS IN ERROR.

A. H. LEONARD,
E. W. SUTHERLIN,
W. P. HALL,
Of Counsel.

Commercial-Gazette Print, Shreveport, La.

In United States Circuit Court of Appeals

October Term, 1904.

No. 233.

A. H. LEONARD, G. R. WILSON, R. N. SMITH, ET AL.,
PLAINTIFFS IN ERROR,

versus

THE VICKSBURG, SHREVEPORT & PACIFIC RAILROAD COMPANY,
J. H. McCORMICK, Receiver,
and C. C. HARVEY, President.

SUPPLEMENTAL BRIEF OF PLAINTIFFS IN ERROR.

A. H. LEONARD,
E. W. SUTHERLIN,
W. P. HALL,
Of Counsel.

SYLLABUS.

Matters once determined in a court of competent jurisdiction may never again be called in question by parties or privies against objection; the estoppel resulting from a judgment as against parties and privies extends to every material allegation and statement which having been made on the one side and denied on the other was at issue in the case in which said judgment was rendered and was determined

therein, and where parties are identical and the titles and issues are the same as in the former suit, the final judgment in such former suit is conclusive as to the strength of those titles in a second suit where other lands are claimed by both parties under the same titles and the same issues.

168 U. S. 1; 7 Wal. 619;
167 U. S. 371.
157 U. S. 683; 101 U. S. 638.
124 U. S. 225; 24 How. 333.
94 U. S. 351.
Black on Judgments, page 739.

The fact that the judgment of the Feredal Court plead as *res judicata* in the State Court may in the opinion of the State Court have been erroneous, does not render it any the less conclusive of the issues therein decided.

121 U. S. 525;
5 Wall. 580;
101 U. S. 638.
20 Wall. 137;
98 N. Y. 351;
5 Gray 316.

"It is a doctrine of law too long established to require a citation of authorities, that where a court has jurisdiction it has a right to decide every question which occurs in the cause, and whether its decision be correct or otherwise, its judgment, till reversed, is regarded as binding in every other court."

169 U. S. 432; 7 How. 612.

The fact that new evidence may be offered or new arguments suggested does not affect the question.

"Whatever is new in the evidence now before us, touching that matter, is simply cumulative on the one side or the other. The application to consider that evidence is practically an application for a re-hearing as to things directly determined in the former suits between the same parties, and which adjudication has never been modified. Such a course of procedure is wholly inadmissible under the settled rule of *res judicata.*"

168 U. S. p. 65.

Where in a former suit by these plaintiffs in error against this railroad company for thirty-five acres of the same tract of land, in the United States Circuit Court for the Western District of Louisiana, both parties claimed under the same titles and the same issues under which both parties now claim the remainder of said tract of land in this suit, and there was a final verdict and judgment in favor of these plaintiffs in error in that case upon all of these titles and issues now again presented to the Court, such final verdict and judgment is *res judicata* and conclusive as to all of such titles and issues there decided; and since no new titles or issues are presented in this case, such judgment is conclusive of this case, and the State Court having refused to so hold and give due effect to such judgment, a Federal question of the highest order is presented for the decision of this Court.

120 U. S. 141.
107 U. S. 3.
162 U. S. 329.
169 U. S. 657.
183 U. S. 233.
21 Wal. 130.

STATEMENT OF THE QUESTION.

The question presented for the decision of this Court is one of *res judicata* and estoppel.

The railroad company sues the Smith Heirs and their vendees, Leonard and Wilson, to whom they sold a part interest in the property, for 178.80 acres of land known as Silver Lake, less thirty-five acres recovered by the Smith Heirs in a former suit against the railroad company, being suit No. 80 in the United States Circuit Court for the Fifth Circuit and Western District of Louisiana.

The Smith Heirs, Leonard and Wilson plead the verdict and judgment in that case between the same parties and their privies as *res judicata* and estoppel of all of the issues and questions raised and decided in that case and urged in the case at bar.

The State Court refused to give force and effect to said verdict and judgment of said Federal Court in said suit No. 80 as *res judicata* of the issues and questions therein raised, controverted and decided, and overruled the plea of *res judicata* based on said verdict and rendered judgment for the railroad company on the same titles and issues on which the Federal Court had rendered verdict and judgment against it and in favor of the Smith Heirs for a part of the same tract of land in said suit No. 80.

So that if the judgment of the State Court is allowed to

stand, we will have two final judgments on the same titles and pleadings between the same parties, directly contrary to each other, one court sustaining the title of the one and the other court sustaining the title of the other to parts of the same tract of land.

The plaintiffs in error claim that full faith and credit and proper force and effect were not given by the State Court to the said judgment of the Federal Court in said suit No. 80.

This will appear from the following brief

STATEMENT OF THE CASE.

THE PETITION.

The Vicksburg, Shreveport and Pacific Railroad Company instituted this suit against Albert Tibbs and many others, asserting title to lots 1, 2, 3, 4, 5, 6, 7, 8, 9 of Section 31, Township 18, Range 13, containing 178.80 acres, less a parcel of land recovered by plaintiffs in error in suit of Robert N. Smith, et als. vs. George A. Turner et als., No. 80 in United States Circuit Court, Fifth Circuit and Western District of Louisiana, and more particularly described as follows (then follows a description of the land, 35 acres, recovered in that suit.)

Petitioner further represents that the said company acquired title to said property through the grant of the United

States by Act approved June 3rd, 1856, entitled an Act making a grant to the State of Louisiana to aid in the construction of railroads in said State, duly accepted by the grantee and the trustee, and that the said land was included in the approved selections made under authority of said Act, and that its title was further acquired through divers conveyances, mortgages, decrees and sales, and by the construction of the railroad through the Parish of Caddo from the west bank of Red river to the Texas State line west of Greenwood before the 3rd day of June, 1886. R. 1.

ANSWER AND PLEA OF *RES JUDICATA.*

The defendants, Tibbs et als., disclaimed all title and averred that they are lessees of A. H. Leonard, George R. Wilson and the heirs of W. W. Smith.

Leonard and Wilson and the Heirs of Smith appeared and answered.

They admit that they are in possession of the property claimed by plaintiff, and further admit that they recovered in suit No. 80 in the United States Circuit Court for the Western District of Louisiana, entitled Robert N. Smith et als. vs. George A. Turner et als., the 35 acres excepted from plaintiff's petition. They aver that they are the legal heirs of W. W. Smith except George R. Wilson and A. H. Leonard, who

acquired an interest from the Smith Heirs.

They allege that the State of Louisiana sold to the said W. W. Smith, on the 14th day of May, 1853, the tract of land claimed by plaintiff, at the price of one dollar and twenty-five cents per acre, which was paid to the Treasurer of the State and never returned to him.

That after said sale the State, through the proper authorities, on the 24th day of July, 1855, issued to Smith a patent to said tract of land, as appears by the patent annexed to the answer.

That the State of Louisiana claimed and acquired said tract of land as swamp land and overflowed land granted to the State of Louisiana by Acts of Congress of 1849 and 1850, and that the State sold it to Smith as swamp land.

They further allege that all sales of land in Louisiana made as swamp and overflowed land, whether made by the United States Government or by the State, and whether the land sold was of that character or not, were confirmed by the Acts of Congress approved March 2, 1855, entitled "An Act for the relief of purchasers and locators of swamp and overflowed lands." That said Act of Congress was extenedd so as to protect sales made after its passage by the Act of Congress of March 3, 1857, to confirm all selections of swamp and overflowed lands.

That said Act of March 2, 1855, confirmed said title to

said Smith, whether swamp land or not, and whether it belonged to the State or to the United States.

That said Smith thus acquired a title to said land from both the State and the United States, by purchase from the State and confirmation from Congress, and that said titles are paramount to all subsequent claims from the Government.

PLEA OF *RES JUDICATA* BY DEFENDANTS.

They finally allege that in the case of R. N. Smith et als. vs. George A. Turner, the Vicksburg, Shreveport and Pacific Railroad Company substituted, No. 80 on the docket of the United States Circuit Court for the Western District of Louisiana, sitting at Shreveport, in which these defendants and their authors were plaintiffs, and the present plaintiff, the Vicksburg, Shreveport and Pacific Railroad Comnpay, was defendant, these defendants, then plaintiffs, claimed a part of the same tract of land now in dispute upon the same title upon which they now rely; and the said railroad company, then defendant, now plaintiff herein, also set up title to the same and relied on the same grant and title from the United States that it now sets up and relies upon in this suit.

That in said suit No. 80 a verdict and final judgment were rendered in favor of these defendants and against said railroad company sustaining the titles set up by these defend-

ants as superior to that set up by the said railroad company; and these defendants plead said verdict and judgment as *res judicata* and estoppel of all the questions put at issue and decided in that case, and especially of the right of the said railroad company to claim any other lands under the same title against the same title held by these defendants, the respective strength of which titles was then put at issue and then finally decided.

The record in said suit No. 80 was annexed and made a part of the plea and answer. They prayed that plaintiff's demand be rejected and that the plea of *res judicata* be sustained and plaintiff's demand dismissed. R. 8, 10.

PLEA OF *RES JUDICATA* BY PLAINTIFF.

The plaintiff, the railroad company, filed a plea of *res judicata* to defendant's answer and claim of ownership of said lands.

It alleged that in a suit entitled State of Louisiana vs. W. W. Smith, 5135 on the docket of the District Court of Caddo Parish, filed..... 1857, defendant put at issue the validity and legality of his title to the land described in plaintiff's petition herein, and by virtue of the certificate and patent described in said petition and upon final hearing judgment was rendered in said suit decreeing said certificate and

patent null and void, and decreeing the cancellation of same and ordering same to be delivered to the State of Louisiana, plaintiff therein, "all of which will fully appear by reference to certified copy of pleadings, evidence and judgment in said suit, hereto annexed and made part hereof."

That the defendant obtained an appeal which was dismissed by the Supreme Court in 1869, and that the defendants, claiming to be the heirs and assigns of W. W. Smith, are bound by said judgment in said suit which is as to them *res judicata* and perpetual bar to their rights of action, and therefore plaintiff prays that this exception be sustained and defendant's demand be rejected. R. 14.

This plea of *res judicata* based upon the case of State vs. Smith, No. 5135 in the District Court of Caddo Parish, Louisiana, was presented and urged and relied upon by the railroad company in said suit No. 80 in the Federal Court and was therein overruled and it was one of the issues and muniments of title settled by the verdict and judgment in said suit No. 80, adversely to the railway company; and its want of binding force as *res judicata* against the Smith Heirs was in said suit No. 80 judicially established and became itself the thing adjudged.

This is true likewise of the title set up and urged by the railroad company in the case at bar. It was set up and urged in the case No. 80 and its want of efficacy against the title

of the Smith Heirs was therein judicially established and became the thing adjudged.

The following is a brief statement of the entry by W. W. Smith of this land and of the suit No. 5135 brought to cancel the patent, and of said suit No. 80 in which the judgment in said suit No. 5135 was plead as *res judicata* by the railroad company and overruled by the verdict and judgment in said suit No. 80:

THE LAND ENTRY BY W. W. SMITH.

On April 30, 1853, the Legislature of Louisiana passed an Act authorizing the sale of shallow lakes after they should be surveyed and had become the property of the State. R. 269. It was promulgated June 23, 1853. R. 269. W. W. Smith, the author of defendant's (plaintiffs in error), purchased the land in question known as Silver Lake, from the State, on May 14, 1853. R. 257.

On June 6, 1853, the entry was marked cancelled, because made before the law was promulgated, but his money was not returned or tendered him. R. 275.

On February 24, 1855, nearly two years after the law was promulgated, and his money not having been returned, the State issued a patent to Smith for the land. R. 257.

STATEMENT OF SUIT NO. 5135.

On December 3, 1857, the State brought suit No. 5135 in the State District Court to annul Smith's patent, on the ground that the purchase was made before the law was promulgated, and before the land was surveyed, and that the patent issued in error, and then tendered him the price, the money being furnished to the District Attorney by a private citizen. R. 259, 266.

The suit was dismissed on exception, was appealed to the Supreme Court, reversed and remanded.

W. W. Smith having died, his administration was made defendant on February 14, 1859. R. 264.

On November 12, 1860, the case was tried and there was verdict and judgment in favor of the State annulling said patent. R. 277, 278. From this judgment the defendant appealed to the Supreme Court, where the case remained until 1869, when the minutes show that it was dismissed by consent of counsel after John W. Smith, the administrator of W. W. Smith, had been finally discharged, and there was no one in court representing the succession of Smith or the Smith Heirs. R. 279, 67, 287.

STATEMENT OF SUIT NO. 80.

On November 6, 1885, the heirs of W. W. Smith, the present defendants (plaintiffs in error), instituted suit in the Circuit Court of the United States for the Western District of Louisiana against George A. Turner, who was in possession of about thirty-five acres of the land, the suit being entitled R. N. Smith et als. vs. George A. Turner, No. 80 on the docket of said Court. R. 208.

They alleged that they were the heirs of W. W. Smith and as such succeeded to all of his rights, allege the sale of the land by the State to Smith, the issuance to him of the patent, that it was swamp and overflowed land granted to the State by Acts of Congress of 1849 and 1850, and that it was sold to Smith as such; that all sales of land in Louisiana claimed as swamp and overflowed lands by the State, whether of that character or not, were confirmed by the Acts of Congress, approved March 2, 1855; that said Act was extended to sales made after its passage and continued in force by the Act of Congress of March 3, 1857, to confirm all selections of swamp and overflowed lands by the several States under the Acts of Congress of 1849 and 1850; that said Act of March 2, 1855, confirmed the title of said Smith to the said tract of land, and that he thus got title from both the State and the United States. R. 208.

Turner answered, declaring that he held as tenant of the

Vicksburg, Shreveport and Pacific Railway Company. R. 211.

The railroad company appeared, and, claiming to hold under grant by Act of Congress of June 3, 1856, to the State in aid of railways, and under an Act of the Legislature of 1857 passing said grant to the railroad, filed on July 21, 1886, a plea of *res judicata,* alleging

"That in a suit entitled 'The State of Louisiana vs. W. W. Smith, No..... on the docket of the District Court of Caddo Parish, Louisiana, filed ....., 1857, defendant put at issue the validity and legality of his title to the land described in plaintiff's petition, under and by virtue of the patent described in said petition, and upon a final hearing judgment was rendered in said suit decreeing said certificate and patent null and void, decreeing the cancellation of same and ordering them to be delivered to the State of Louisiana, plaintiff therein; all of which will fully appear by reference to a certified copy of pleadings, evidence and judgment in said suit hereto annexed and made part hereof.

"That plaintiffs in this suit, the Heirs of W. W. Smith, are bound by the judgment in said suit, which is to them *res judicata;* and defendants therefore pray that their suit may be dismissed." R. 218.

On July 29, 1886, the railroad company filed its answer.

It "alleges that the sale or entry of said land, as set forth in petition, was cancelled by the Register of the State Land

Office on the 10th (6) day of June, 1853, as appears by the records of that office, and which cancellation was duly notified to said Smith, and that said sale, entry and patent are null, and were done without authority of law, in this, to-wit:

"First—Because the law under which said entries were made had not been promulgated at the date of the entry.

"Second—Because said land had not at the time of said entry been legally surveyed, nor had any survey thereof been recognized by the State of Louisiana.

"Third—Because the patent to said land was issued by the register in error of the fact that said entry had been cancelled before the law authorizing the sale of shallow lakes had been promulgated.

"Further answering, defendant alleges that said land was never selected by the State of Louisiana as swamp and overflowed land, and has never been reported to the Commissioner of the General Land Office and never approved as such by the Secretary of the Interior or Land Commissioner; and further alleges that said land was never listed or returned by the Secretary of the Interior to the State of Louisiana as swamp and overflowed lands, and that the State of Louisiana has never claimed or acquired said land as such; and furthermore, that said land had not and never did belong to that class of lands, but to that other class of lands known or designated as shallow lakes, and therefore not embraced in the grant from the

United States Government under the Acts of Congress of 1849 and 1850, of swamp and overflowed lands.

"Defendant further answering alleges that said defendant company is the owner of said land by good and sufficient title, by grant from the United States Government under Act of Congress approved June 3, 1856, to the State of Louisiana, to aid in the construction of railroads in said State of Louisiana, and which was accepted by said State of Louisiana for such purpose, and all of the requirements of said grant having been complied with by said State and by the Vicksburg, Shreveport and Pacific Railroad, the land described in plaintiff's petition being embraced in the said gran was acquired by the said railroad company and duly certified or patented as belonging to the said company by the United States Government, and which has been legally sold and transferred by said railroad company to defendant company and deed duly recorded." R. 291.

Upon these pleadings and issues the case No. 80 went to trial, and there was a verdict for the plaintiffs, the Smith Heirs, for the land sued for, being about thirty-five acres of the Silver Lake tract. R. 293.

There was judgment for plaintiffs in accordance with the verdict as follows:

"U. S. Circuit Court, Fifth Circuit, Western District of Louisiana. Robert N. Smith et al. vs. George A.

Turner and the Vicksburg, Shreveport and Pacific Railroad Company. No. 80.

"In this case, by reason of the law and the evidence and the verdict of the jury being in favor of the plaintiffs and against the defendants, it is ordered, adjudged and decreed that the plaintiffs, Robert N. Smith, Elizabeth A. Smith, wife of Marvin Duval; Elizabeth W. Smith, William L. Smith and John S. Smith, be and they are hereby declared to be the owners of the land in controversy and entitled to possession of same, said land being known and designated as follows (then follows description) containing thirty-five and 18-100 acres, situated in the Parish of Caddo, Louisiana," etc.

"It is further ordered and decreed that plea of *res judicata* be overruled." R. 294.

A writ of error was taken to the Supreme Court of the United States but was dismissed for want of jurisdiction, the thirty-five acres involved in that suit being worth less than two thousand dollars. See the case reported in 135 U. S. 195, with a remarkably clear statement of the issues involved.

We have thus quoted the pleadings in that case No. 80 at great length, for the reason that it is the verdict and judgment in that case that we urge and plead in the case at bar as *res judicata* and estoppel of every issue of law and fact herein involved; every question of law and fact here in contest having

been there litigated and decided, the only difference between the two cases being that this suit is for a different piece of the same tract of land claimed by both sides under the same titles. The railroad company relied upon the same title in that case as in this and urged the same plea of *res judicata* based upon the judgment of the State Court in the case of the State of Louisiana vs. W. W. Smith, No. 5135, that it urges in this case; and the Smith heirs urge precisely the same titles urged in that case.

Compare the railroad company's answer in the suit No. 80 (R. 291) with its petition in this case (R. 1) and compare its plea of *res judicata* based on the case of State vs. Smith (R. 218) with its plea of *res judicata* in the case at bar (R. 14); and compare the petition of the Smith Heirs in that case (R. 208) with their answer in the case at bar (R. 8, 10). Indeed, it is not denied that the titles and issues are the same between the same parties.

The case was tried and from an adverse judgment the defendants appealed to the Supreme Court of the State, where the judgment of the lower court was affirmed.

From the judgment of the State Supreme Court they took this writ of error to this Court, after an unavailing application for a re-hearing, and make the following

ASSIGNMENT IF ERRORS.

"First—The Court erred, as they believe, in overruling the pleas of *res judicata* and estoppel interposed by plaintiffs in error as defendants in this case, based upon the judgment of the Circuit Court of the United States for the Fifth Circuit, Western District of Louisiana, in the case of R. N. Smith et als. vs. George A. Turner and the Vicksburg, Shreveport and Pacific Railroad Company, No. 80 on the docket of said Court.

"Second—The Court erred in refusing to hold that issues set up and decided in said suit in said Federal Court were *res judicata* of the same issues when set up in this suit between the same parties, and in holding that where the same parties had in a former suit set up the same titles set up by each in this suit, and there was final judgment upon the same, that these issues and these titles could be again set up and litigated between the same parties, when other lands acquired under the same titles are in controversy.

"Third—The Court erred in holding that where a part of a tract of land was in a former suit claimed by one party under a title, and the defendant in that suit claimed the land under another title, and there was final verdict and judgment between the parties as to which had the

better title, and in a subsequent suit involving another piece of land, a part of the same tract, between the same parties, each set up a claim of ownership by the same title under which he haid claimed the former piece of land, that in such case the judgment so rendered passing on the strength of the two titles in the former suit is not *res judicata* as to their strength in the subsequent suit.

"Fourth—The Court erred in refusing to hold that the matters once determined in a court of competent jurisdiction may never again be called in question by parties or privies against objection, and in refusing to hold that the estoppel resulting from a judgment as against parties and privies extends to every material allegation and statement which having been made on the one side and denied on the other, was at issue in the case in which said judgment was rendered and was determined therein, and in refusing to hold that where parties are identical and the titles involved are the same, a judgment in the one case is conclusive as to the strength of those titles in another case, where other lands are claimed by both parties under the same titles and the same issues.

"Fifth—The Court erred in refusing to give effect to the reservation made in the Act of Congress of June 3, 1856, granting land to the State of Louisiana in aid

of railroads, of all lands previously granted or as to which interposing rights existed.

"Sixth—The Court erred in refusing to hold lands granted to (in) the swamp land grants and in which third parties had acquired rights could not be granted by any subsequent Act of Congress.

"Seventh—The Court erred in holding that the Act of Congress of June 3, 1856, granting land in aid of railroads vested title to the land in controversy in the Vicksburg, Shreveport and Pacific Railroad Company, and that despite the reservation in said Act these lands passed under it although they had been previously granted to the State by the swamp land grants.

"Eighth—The Court erred in holding that the Vicksburg, Shreveport and Pacific Railroad Company has a legal right to the land in controversy good against the world enabling it to recover in a petitory action.

"Ninth—The Court erred in holding that an action to annul a title to the land being a real action, may after the death of the defendant be revived and prosecuted by citation only to the administrator of the deceased defendant, even though the heirs of said defendant are known and present or represented by agents, tutors or guardians.

"Tenth—The Court erred in holding that the judgment in the said suit of the State of Louisiana vs. W. W. Smith in the District Court of Caddo Parish, Louisiana, had and has the force of the thing adjudged.

"Eleventh—The Court in rendering a decree and in entering a judgment herein in favor of plaintiff and against the defendants, your petitioners, such judgment and decree being contrary to the law and the evidence. R. 320.

ARGUMENT.

The first four assignments of error relate to the overruling of the plea of *res judicata* based upon the verdict and judgment in the suit No. 80.

The judgment plead as *res judicata* and estoppel was rendered in the United States Circuit Court for the Western District of Louisiana in suit No. 80 on the docket of that Court.

It was a suit between the same parties, the Smith Heirs being plaintiffs in that suit and defendants in this; while the Vicksburg, Shreveport and Pacific Railroad Company was defendant in that suit and plaintiff in this.

That suit was for the recovery of thirty-five and 18-100 acres of a larger tract known as Silver Lake, containing 178.57 acres. This suit is for the recovery of the remainder of said tract.

In the former suit the Smith Heirs as plaintiffs claimed under the same title that they set up now as defendants in this suit, and the railroad company set up the same title in that case as defendants that it relies upon as plaintiff in this suit, and made the same charge of nullity against the title of the Smith Heirs that it makes as plaintiff in this suit.

In other words, the two titles that were pitted against each other in that suit and the assaults made upon them were precisely the same as in the present suit.

In that suit there was a final judgment in favor of the Smith Heirs sustaining their title and rejecting that of the railroad company, and rejecting the charges of nullity urged then and now against the title of the Smith Heirs.

The railroad company plead the judgment in State vs. Smith as *res judicata* against our title in that case as in this. There was final judgment in that case in our favor and we plead it as *res judicata* of the issues here presented.

The only difference between the two suits is that this suit is for the remainder of the same tract of land and does not embrace the 35.18 acres, though all depend upon the same issues and same titles decided in that suit between the same parties.

Are these issues settled as between the same parties by that judgment, or are they open to be revamped anew?

Are these titles, after being weighed against each other

and their weight finally determined, to be weighed against each othr again, to find if, perchance, this time the greater weight be given to the other?

The titles and issues now presented are the same "matters in issue or points controverted upon the determination of which the finding or verdict was rendered" in said suit No. 80.

In a recent case of importance the Supreme Court of the United States applied these principles to a suit involving title to a large quantity of land. It was the case of the Southern Pacific Railway Company vs. United States, 168 U. S. 1.

In that case the United States sued to recover certain lands which had been granted to the Atlantic and Pacific Railroad Company and afterwards forfeited by Act of Congress.

In the meantime a grant had been made to the Southern Pacific Railroad Company and it claimed that when the former grant was forfeited the land reverted to it under its grant. The United States claimed that the Atlantic and Pacific Railroad having filed its maps of definite location, the land was withdrawn from the public domain and was unaffected by the grant to the Southern Pacific.

In some former suits where the United States claimed other lands on the same grounds, the same defenses were urged and there was final judgment in favor of the United States, and the latter plead the former judgments as *res judicata*, and the plea was sustained, the Court holding that al-

though the case involved different lands from those involved in the former suits, yet the titles and issues were the same and that the final judgment rendered in the former suits upon those issues and titles was *res judicata* between the same parties as to all other lands claimed upon the same grounds. It was suggested in argument that certain points and arguments arising on these titles were not made or passed upon in the former suit and should now be considered, but the Court refused to entertain this view, remarking that "Whatever is new in the evidence now before us, touching that matter, is simply cumulative on the one side or the other. The application to consider that evidence is practically an application for a re-hearing as to things directly determined in the former suits between the same parties, and which adjudication has never been modified. Such a course of procedure is wholly inadmissible under the settled rule of *res judicata.*" Ibid, p. 65.

That case seems to be on "all fours" with the case at bar. In both cases the titles and issues were the same, but the land was a different tract in each case.

The State District Judge overruled the plea for two reasons, First, because the suit No. 80 involved a tract of thirty-five acres, while the present suit involves the remainder of the tract, about 142 acres; and, Second, because the judgment in suit No. 80 overruling the plea of *res judicata* presented in that case and again in this, based upon the judgment of the

State Court in State vs. Smith, was, in his opinion, rendered upon a false or mistaken certificate of the clerk of the Supreme Court of the State, that the appeal in State vs. Smith had not been filed in the Supreme Court, causing the record to show that the case of State vs. Smith had not been disposed of. R. 15.

We do not understand that this Court is concerned with the reasons assigned by the inferior court, but only with those assigned by the Supreme Court; but as counsel have seen proper to quote at length from the opinion of the district judge, we will examine it.

The judge says:

> "Through an error on the part of the clerk of the Supreme Court, he signed a certificate, on July 26, 1886, stating that the case of the State vs. W. W. Smith had not been filed in the Supreme Court. This certificate was filed in the case of Robert N. Smith vs. George A. Turner, causing the record in that case not only to show that the administrator of the succession of W. W. Smith had filed his final account, and had been ordered discharged, but that the case of the State vs. W. W. Smith had not been finally disposed of.
>
> "It is the opinion of the court that it is owing to the fact that the certificate above referred to indicated that no final decision had been rendered in the case of the

State vs. Smith that caused the judge to hold in the case of Smith vs. Turner that the entry of W. W. Smith had not been cancelled." R. 15.

This certificate (R. 288) would show just the reverse. If the transcript of appeal from the judgment rendered in 1860 had not been filed in the Supreme Court by July, 1886, the appeal would be abandoned in law. Indeed, if an appeal is not filed in three days after the return day fixed in the order of appeal, it is lost unless an extension of time is granted.

But it is probable that the judge intended to refer to the extract from the minutes of the Supreme Court signed by Dupree, clerk Supreme Court, (R. 287) which shows that the case was on the Supreme Court docket at Natchitoches and was continued on August 14, 1866. R. 287.

There is no error in this. He does not certify that this was all the orders that had been rendered in the case; indeed, it is not certified at all, but is a mere extract from the minutes of the Supreme Court signed by the clerk.

There was no error in Clerk Wilson's certificate that the appeal had not been filed at Monroe, for it appears to have been filed at Natchitoches.

If there was error at all, it was in the railroad company's failing to examine the minutes of the Supreme Court after August 14, 1866, and find out and show what had been done with the case on August 11, 1869. Surely this was no fault of

the Smith Heirs or of the clerk of the Supreme Court.

But even if the judgment in suit No. 80 had been erroneous, or had been rendered on a false certificate, or on false testimony (not procured by the adverse party), these things would not make it any the less *res judicata*. The State Court had enough to do to decide the case before it without inquiring as to the correctness of the judgment of the Federal Court plead as *res judicata*.

In the very next sentence of the opinion, after making this collateral attack upon the final judgment in suit No. 80, the court recognizes that a final judgment is not subject to collateral attack by saying of the judgment in State vs. Smith, that

> "In the case of the State of Louisiana vs. W. W. Smith, the judgment annulling the title to W. W. Smith to 'Silver Lake' and 'Cross Lake' having become final, it was not subject to be collaterally attacked."

It did not treat the final judgment of the Federal Court with the same consideration.

In Central National Bank vs. Stevens, 169 U. S. 432, at page 459, the Court quotes with approval from Peck vs. Jenness, 7 How. 612, as follows:

> "It is a doctrine of law too long established to require a citation of authorities, that, where a court has jurisdiction, it has a right to decide every question which

occurs in the cause, and whether its decision be correct or otherwise, its judgment till reversed is regarded as binding in every other court; and that where the jurisdiction of a court an dthe right of a plaintiff to prosecute his suit in it have once attached, that right can not be arrested or taken away by proceedings in another court."

In almost every case the parties could prove other facts if not prevented by *res judicata,* and if that would justify a court in rejecting the plea, it would be of little value.

The rule is just the reverse. He has his day in court in which he must produce all of his testimony. Subsequently discovered testimony cumulative in support of the titles urged in the former suit will not re-open the question. This alleged dismissal was in August, 1869, nearly twenty years prior to the trial of suit No. 80, and the lower court was clearly in error in holding that subsequently discovered testimony avoided the effect given to the solemn and final judgment of the Court. 168 U. S. 1.

The question is not whether the judgment in suit No. 80 was correct on the evidence produced or on such as might have been produced, but the question is: Was it a final judgment?

After hearing on the same issues between the same parties, *res judicata* makes white black and black white.

Once established, it is like any other title which it is the

duty of the Court to respect and enforce.

As already stated, the district judge and also the State Supreme Court assigned as another reason why they would not give due effect to the judgment of the Federal Court in said suit No. 80—that said suit involved only the thirty-five acres claimed in that suit and that in determining the question of jurisdiction on appeal the Supreme Court of the United States held that the thing of value before it, the *res*, was only the thirty-five acres claimed, and dismissed the appeal.

135 U. S. 195.

This ruling of the Supreme Court of the United States was a correct conclusion as to what was before it. Only thirty-five acres were claimed in that suit and that judgment finally decided the title to only the thirty-five acres and the judgment could have been executed upon only the thirty-five acres.

But it is *res judicata* as to all of the *issues, titles and grounds of recovery and defense* set up and litigated and decided between these parties in that suit, whenever the same may arise in other suits about other property between the same parties or their privies.

What we contend for is that the status and strength of the same titles now relied upon by both parties in this case were tested and settled in that suit and that that judgment is conclusive as to the strengh of these titles when set up against

each other in any other case between the same parties in the same capacity.

Had either party raised other issues than those raised in the former suit, as, for instance, title by prescription or by tax sale, or by purchase from a stranger, or from his antagonist's author, the former judgment would not be *res judicata* as to any of such issues, because they were not raised or decided in such former judgment.

But it so happens in this case that no issues are in fact raised that were not raised and decided in the former case. The judgment, therefore, in that case being *res judicata* of all these issues, they are not open to controversy in this case.

The same thing happened in the case of the Southern Pacific Railroad Company vs. United States, 168 U. S. 1 (already cited). In that case both claimed certain lands. In a former suit or suits, the same parties had claimed other lands under the same respective titles. No issues were raised that were not raised and decided in the former suits. The judgments in the former suits were plead as *res judicata* as to these issues and the plea was sustained.

So in the case at bar; the titles and issues are precisely the same as in the former case.

The railroad company sets up the same title; the Smith Heirs set up the same. The railroad company sets up the same plea of *res judicata*, based upon the same judgment of the

State Court in the case of State vs. Smith, that it set up in the former case.

Upon all these issues there was verdict and judgment for the Smith Heirs in said suit No. 80, and we submit that such verdict and judgment are *res judicata* of these issues in this suit; and there being no other issues in this suit said judgment is *res judicata* of this case, and if due effect had been given to the judgment of the Federal Court in said suit, No. 80, by the State Court it would have so held.

Some effort has been made to construe the judgment of the Supreme Court of the United States in dismissing said suit, No. 80, for want of jurisdiction as in some way limiting the effect of the judgment in that case. If we were claiming that that judgment finally awarded the whole of Silver Lake to us, there would be something in the contention, but we are not claiming that; but claiming simply that the questions, titles and issues raised, litigated and decided in that case by these parties can not be again litigated between them, and there is not one word or hint in the opinion of this Court that militates against the finality of that judgment as to the issues therein determined. See the opinion in 135 U. S. 195.

Res judicata is not confined to the thing, the property, in dispute, but extends to every material allegation and statement which having been made on the one side and denied on the other was at issue in the case in which such judgment was

rendered and was determined therein, and where parties are identical and titles and issues are the same as in the former suit, it is conclusive as to the strength of those titles and of those issues, and especially so where other lands, part of the same tract, are claimed by both parties under the same titles and issues.

In City of Aurora vs. West, 7 Wall. 82, plaintiff sued on coupons of fifty bonds for three years' interest. Two former judgments for other coupons of the same bonds were successfully urged as *res judicata* of the validity of the bonds.

Held: "Where the parties are the same, the legal effect of a former judgment as a bar is not impaired because the subject matter of the second suit is different, provided the second suit involves the same title and depends upon the same question."

In Morgan vs. Beloit, 7 Wall. 619, the plaintiff sued on certain bonds issued under a statute of Wisconsin. In a former suit he had recovered judgment on other bonds of the kind against the same defendant.

This Court said: "Under such circumstances, a judgment is conclusive, not only as to the *res* of that case, but as to all further litigation between same parties touching the same subject matter, though the *res* itself may be different."

In Cromwell vs. County of Sac., 94 U. S. 351, this Court re-affirmed this doctrine and drew the distinction between cases where the same *res* and those where a different *res* was in-

volved; and declared the law to be that where the *res* is the same the bar of *res judicata* is absolute and cuts off every issue that was made or could have been made; while in cases where the *res* is different it bars only such issues and titles as were in fact urged and decided in the former case, a distinction which in no manner affects our contention in the case at bar, for here the issues and titles are identical with those litigated and decided in the former case.

In Lumber Co. vs. Buchtel, 101 U. S. 638, where the same defense was urged against the suit on the note for the second installment of the price of some timber that had been urged in a suit between the same parties on the first note, the Court applied the rule and held the finding in the first suit conclusive of the second.

In Bissell vs. Spring Valley Township, 124 U. S. 225, which was a suit on coupons of bonds which had been found illegal in a suit on prior coupons of the same bonds, this Court applied the rule saying in concluding the opinion: "The facts and the law are adjudged matters between the parties, and not open, therefore, to any further contest."

In Milne vs. Deen, 121 U. S. 525, a judgment against plaintiff in a suit for one month's rent was sustained as *res judicata* of a subsequent suit for $12,026.89 for two years' rent under the same lease, the lessee having abandoned the premises, and it appearing that the first suit was defended on

the ground of fraud and the second on the same ground.

In that case this Court also said: "The effect of the judgment is not at all dependent upon the correctness of the verdict or finding upon which it was rendered. It not being set aside by subsequent proceedings, by appeal or otherwise, it was equally effective as an estoppel upon the point decided, whether the decision was right or wrong. Packet Co. vs. Sickles, 72 U. S., 5 Wal. 580; Lumber Co. vs. Buchtel, 101 U. S. 638; Tioga R. R. Co. vs. Blossburg & C. R. R., 87 U. S., 20 Wal. 137; Pray vs. Hegeman, 98 N. Y. 351; Merriam vs. Whittemore, 5 Gray 316."

In the Johnson Co. vs. Wharton, 152 U. S. 252, it was urged against a former judgment between the same parties on the same question when plead as *res judicata* of a second suit for a large amount, that the former judgment was for so small an amount that it could not be brought before this Court on appeal, and that this Court should not, therefore, respect its findings.

But the contention was rejected by this Court both on principle and authority, saying:

"The existence or non-existence of a right, in either party, to have the judgment in the prior suit re-examined, upon appeal or writ of error, can not, in case, control this inquiry."

In New Orleans vs. Citizens Bank, 167 U. S. 371, a Louisiana case, this Court again held that:

"The estoppel of a judgment does not depend upon the question whether or not there is the same demand in both cases, but it exists, even although there be different demands, when the question upon which the recovery of the second demand depends has, under identical circumstances and conditions, been previously concluded by a judgment between the parties or their privies."

In that case this Court said at page 398: "And the law of Louisiana is exactly in accord with the rulings of this Court," citing numerous cases; and the Supreme Court of Louisiana in the case at bar makes no claim that there is any difference.

In the case of Harvin vs. Blackman, 112 La. 24 (1904) the Supreme Court of Louisiana recognized and enforced the rule here invoked that *res judicata* applies where the *res* is different if the titles and issues are the same.

In that case the suit before the Court was for the ownership of a plantation; the judgment invoked was for the rent of one year under a lease. The Court held it to be conclusive of the validity of the lease when assailed in the suit for the plantation.

These authorities, with the case of Southern Pacific Railway Company vs. United States, 168 U. S. 1, already cited, would seem to settle the law of the case, and there being no dispute that the titles and issues in this suit are the same litigated and settled between the same parties and their privies in

the suit plead as *res judicata*, they seem to be conclusive of the case without discussing the merits.

These principles the State Court does not deny, but simply ignores them, though they seem to be sound on principle and authority.

We submit the judgment should be reversed.

A. H. LEONARD,
E. W. SUTHERLIN,
W. P. HALL,
Of Counsel.

Supreme Court of the United States

OCTOBER TERM, 1904.

No. 233.

A. H. LEONARD, GEORGE R. WILSON, R. W. SMITH *ET AL.*

PLAINTIFFS IN ERROR.

versus

THE VICKSBURG, SHREVEPORT & PACIFIC RAILROAD COMPANY,

J. H. MCCORMICK, RECEIVER,

AND

C. C. HARVEY.

BRIEF IN SUPPORT OF MOTION TO DISMISS OR AFFIRM.

MOTION TO DISMISS OR AFFIRM.

Come now the defendants in error, the Vicksburg, Shreveport & Pacific Railroad, J. H. McCormick, receiver, and C. C. Harvey, by their counsel of record, Harry H. Hall, Frank P. Stubbs and W. H. Wise and move the

Court to dismiss the above entitled cause for want of jurisdiction in the Supreme Court of the United States to review the same in that:

No Federal question sufficient to give jurisdiction to this Court to review the decision of the State Court is involved in the cause or was decided by the Supreme Court of Louisiana.

The Supreme Court of Louisiana based its decision upon sufficient grounds which did not involve and are not claimed to involve a Federal question;

Or, if the writ of error shall not be dismissed, that the judgment of the said Supreme Court of Louisiana be affirmed, on the ground that although in the opinion of this Court, the record may show that this Court has jurisdiction, it is manifest that said writ of error was taken for delay only, and that the question upon which jurisdiction depends, is so frivolous as not to need further argument.

HARRY H. HALL,
W. H. WISE,
FRANK P. STUBBS,
Counsel for the Above Named Appellees.

To Messrs. W. P. Hall, E. W. Sutherland, Albert H. Leonard.
Counsel representing the claimants herein:

Please take notice that on the 18th day of January 1904, the motion of which the foregoing is a copy will be submitted to the Supreme Court of the United States for the decision of the Court thereon. Annexed hereto is a copy of our brief or argument in support of this motion.

HARRY H. HALL,
FRANK P. STUBBS,
W. H. WISE,
Counsel for above named Appellants.

BRIEF.

STATEMENT OF FACTS AND PLEADINGS.

The Petition.

The Vicksburg, Shreveport & Pacific Railroad Company, a corporation organized under the laws of the State of Louisiana, brought this suit in the First District Court of Louisiana, Parish of Caddo, No. 5231, against sundry possessors, asking that it be decreed to be the owner of and, as such, put in possession of the following tract of land situated in Caddo Parish, Louisiana, to-wit:

Lots 1, 2, 3, 4, 5, 6, 7, 8 and 9 of Section 31, Township 18, Range 13 west, containing 178 80-100 acres, less a certain parcel of land recovered by Robert N. Smith and others in the suit of Geo. A. Turner et al., and which parcel of land originally formed a part of the said nine lots and is fully described by metes and bounds, in the petition, and consists of 35 18-100 acres. Plaintiff, therefore, sues herein for 143 22-100 acres. T. p. 1.

The Answer.

The possessors, made defendants, disclaim all interest in the property, averring that they are lessees and tenants of A. H. Leonard, Geo. R. Wilson and the heirs of W. W. Smith, all of whom, for plea and answer to the plaintiff's suit, set up that they, being either the heirs of W. W. Smith or parties privy, instituted a suit, No. 80 on the docket of the Circuit Court of the United States for the Western District of Louisiana, against Geo. A. Turner, alleging and claiming ownership of the entire tract above described, which was known as Silver Lake, and praying to be restored to possession of about forty acres of said tract illegally held by the said Turner.

That, in said suit, Turner appeared, disclaiming title and averring that he was a tenant of the Vicksburg, Shreveport & Pacific Railroad Company, plaintiff in this suit, and that, thereupon the said railroad company answered, claiming possession and ownership of the entire tract known as Silver Lake.

That, on final hearing, a judgment was rendered in said suit No. 80, in favor of the plaintiffs therein, said heirs of W. W. Smith, decreeing them to be the owners of the land in controversy in said suit, and they were put in possession of the same.

That the said judgment is effective and final and has the force and effect of *res adjudicata*, as against all parties to said suit and as against the claims of the plaintiffs herein, and estops it from asserting the said claim. T. p. 6.

Further, the said defendants answer that the State of Louisiana sold to W. W. Smith, on the 14th of May, 1853, the said tract of land claimed by plaintiff, for the price of $1.25 per acre which was paid into the Treasury of the State by the said Smith and was never returned to him; that, on the 24th of February, 1855, the State of Louisiana through its constituted authorities issued a patent to said tract of land to the said Smith;

That the State of Louisiana claimed and acquired the said tract of land as swamp and overflow land, granted to the State of Louisiana by Acts of Congress of 1849 and 1850—as the Swamp Land Grants, and that the State sold the said lands to the said Smith as swamp and overflowed lands;

That all sales of land in Louisiana made as swamp and overflowed land, whether made by the United States or by the State of Louisiana, and whether the land sold was of that character or not, were confirmed by the Acts of Congress approved March 2nd, 1855, entitled "An act for the

relief of purchasers and locators of swamp and overflowed lands;"

That the said Act of Congress of March 2nd, 1855, was extended so as to protect sales after its passage, by the Act of Congress of March 2nd, 1857, to confirm all selections of swamp and overflowed lands by the several States under the Acts of Congress of 1849 and 1850;

That the said Act of Congress of March 2nd, 1855, confirmed the title of the said W. W. Smith to the said tract of land, whether said land belonged to the State of Louisiana, under the Swamp Land Grant of Congress, or whether it belonged to the United States and that the said Smith thus acquired a title to the said land, both by purchase from the State of Louisiana and by confirmation by Congress;

That in the case of **R. V. Smith et al. vs. Geo. A. Turner,** the Vicksburg, Shreveport & Pacific Railroad Company substituted, No. 80 on the docket of the United States Circuit Court for the Western District of Louisiana, said railroad company *"claimed a part of the same tract of land now in dispute,"* upon the same title upon which they now rely and which is set forth above;

That judgment was rendered against the said railroad company in said suit No. 80, sustaining the title set up by these defendants who plead said judgment as *res adjudicata* and estoppel. T., pages 8, 9 and 10.

One of the said defendants, Albert H. Leonard, further answering, sets up in addition to the defense, just recited, of his co-defendants, that the said railroad company sued out a writ of error to the Supreme Court of the United States from said judgment, in said suit No. 80, and that the said Supreme Court dismissed the said writ and affirmed the said judgment, which, thereupon, became final and conclusive. P 10.

Plea of Railroad Company.

Thereupon J. H. McCormick, receiver for the Vicksburg, Shreveport & Pacific Railroad Company, filed his plea and exception of *res adjudicata* to defendant's answer and plea therein of ownership of the said lands, averring that, in a suit entitled **State of Louisiana vs. W. W. Smith et al.**, No. 5135 of the docket of the District Court of Caddo Parish, Louisiana, filed in 1857, said defendant put at issue the validity and legality of his title to the land described in plaintiff's petition herein and claimed, by virtue of the certificate and patent described in said petition, and, upon final hearing, a judgment was rendered in said suit decreeing said certificate and patent null and void, and decreeing the cancellation of the same and ordering same to be delivered to the State of Louisiana, plaintiff therein;

That in the said suit, No. 5135, defendant obtained an order of appeal from the judgment of Court rendered therein to the Supreme Court, which said appeal was dismissed, and that said judgment is *res adjudicata*, and a perpetual bar to defendant's rights of action. T. P. 14.

Opinion and Judgment.

The opinion and judgment of the Judge of the First Judicial District Court of Caddo Parish in this suit, No. 5231, is substantially as follows:

Defendant's plea of *res adjudicata* is based upon the fact that in suit No. 80, United States Circuit Court, **Smith et al.** sued **Turner** for 35.18 acres in the tract of 178.80 acres, known as *Silver Lake*, and recovered a judgment against the Vicksburg, Shreveport & Pacific Railroad Company therefor, as Turner's lessor.

That, on the trial of that cause, counsel for the Vicksburg, Shreveport & Pacific Railroad Company offered to prove that the entire tract of 178.80 acres was worth $10,000.00, whereupon counsel for **Smith et al.** objected upon the ground that the title to the 178.80 acres was not in controversy, but only the title to the 35.18 acres, being the tract sued for. That the question was thus directly put at issue whether the suit involved the title to the entire tract or merely to those particular 35.18 acres for which Turner was sued. The Court says:

> "The same parties who now contend that the decision in that case constitutes the thing adjudged as "to the entire tract of 178.80 acres, at that time successfully contended that nothing was at issue except "the question of right of ownership to 35.18 acres. In "his decision on that point, the presiding Judge "said:
>
> "'The testimony of the above named witnesses was "'not heard because the petition claimed only the "'number of acres of land held by or in the possession of Geo. A. Turner, the defendant; that the "'judgment in this case, if for the plaintiff, could "'affect only the land held by Turner.'" P. 15.

The Court says that when the suit was carried to the Supreme Court of the United States on a writ of error, the attorneys for the **Smith heirs** moved to dismiss the writ of error, contending that there was no appellate jurisdiction of the Supreme Court, as the only question at issue was the possession of 35.18 acres of land worth not over $2,000.00 and there was no controversy relating to the entire tract of 178.80 acres, worth $10,000.00, and that, in the motion to dismiss the writ of error, they say:

> "It is therefore submitted that no competent question is raised upon the record except as to property worth about $2,000.00 and, therefore, the writ of error should be dismissed."

He adds that the Supreme Court of the United States concurred in this view of counsel and dismissed the writ of error, holding that no property was at issue or could be affected by the judgment in the case, except that particular tract of 35.18 acres;

> That "it is now asked of this Court, in this case, "that the said judgment in suit No. 80 awarding to the "Smith heirs 35.18 acres of land, be so extended as to "cover the entire tract of 178.80 acres, and to ignore "that part of the same case in which it is decided, "both by the Circuit Court and the United States "Supreme Court, that the decision in that case in no "manner involves the entire tract."
>
> "And thereupon the plea of *res adjudicata* field by defendant herein is overruled." T. p. 16.

As to the plea of *res adjudicata* set up by the railroad company against the Smith heirs, the Court finds that, upon the 30th of April, 1853, *an act* was passed by the *Legislature of Louisiana* authorizing the Register of the State Land Office to sell the *shallow lakes* in this State, *provided that such sales should not be made until the lands had become the property of the State and had been legally surveyed and the property recognized;*

That said Act was not promulgated until June 23rd, 1853;

That, on May 14th, 1853, *Crenshaw*, Register, certified that *W. W. Smith* had purchased from the State and had paid $1.25 per acre for the shallow lake known as Silver Lake in the Parish of Caddo, containing 186.57 acres; That the evidence showed that this area had not been surveyed and listed, at that time, as required.

That a patent issued, on the 24th of February, 1855, as "shallow lake land" pursuant to the said Act of the Legislature *which lake was not claimed to be swamp and overflowed lands.*

That *Crenshaw*, Register, of the State Land Office testified in the case of the **State vs. Smith** that the land sold to Smith was never claimed as swamp land nor sold as such;

That *Harleson*, who was register at the time, testified in that case on the 19th of December, 1857, as follows:

> "In the warrant book there is opposite Smith's "entry of Silver Lake, the following words in the "handwriting of W. H. Crenshaw, Register, to-wit: "'This sale is cancelled, because sold in error, the "law not having been promulgated. June 6th, 1853.' "(Signed) Wm. H. Crenshaw, Register."

That the evidence of Crenshaw shows that the notice of cancellation was served on Smith;

That the evidence further shows that a legal tender of the money paid was made December 3rd, 1857;

That the petition in the suit of the **State of Louisiana vs. W. W. Smith**, sets forth that the Register issued the patent to W. W. Smith to Silver Lake in error. *First*, because the law had not been promulgated; *secondly*, because the lake had not been surveyed, nor had the surveys ever been recognized by the State; and, *thirdly*, because the patent was issued by L. J. Sigur, Register, in error of the fact that the law had not been promulgated at the time of the entry, and of the other fact that the entry had been cancelled before the law had been promulgated. P. 17.

That judgment was rendered, on the 24th of November, 1860, in favor of the State cancelling the Smith entry;

That an appeal was taken by Smith, administrator, returnable to the Supreme Court of Louisiana, on the second Monday of July, 1861, which appeal was not heard by reason of the civil war, and was not determined until August 11th, 1869, when the said appeal was dismissed, leaving the judgment of the District Court cancelling the Smith entry in full force;

That an erroneous certificate of the Clerk of the Supreme Court filed in the case of **Robert N. Smith vs. Geo. A. Turner, No. 80,** as above, caused that record to show that the case of the **State vs. W. H. Smith** had not been finally disposed of;

That, in the opinion of the Court, it was this certificate which caused the Judge, in the suit No. 80, to hold that the entry of W. W. Smith had not been cancelled;

That in the case of the **Texas & Pacific Railway Company vs. Robert N. Smith et al.,** the United States Circuit Court of Appeals said, in speaking of the title of W. W. Smith:

> "We find that entry to have been cancelled and annulled, the suit of the State and adjudication therein having become final by the action of the highest Court of the State." P. 18;

And the Court further finds that the title of the Vicksburg, Shreveport & Pacific Railroad Company in and to the lands in question is perfect;

That, the said railroad company was chartered by Act No. 228 of the Acts of the Legislature of Louisiana of 1853;

That, on the 3rd of June, 1856, Congress donated to Louisiana for the express purpose of aiding in the construction of a railroad on the Texas Line to Greenwood, Shreveport and Monroe to a point on the Mississippi river opposite Vicksburg, every alternate section addition of land for six sections in width on each side of the road;

That in 1857 the State accepted the donation, and granted the lands to the railroad company, the Legislature, at the same session, authorizing the said company to mortgage the said lands; that the said lands were duly selected and listed as required; that the identical numbers involved in this suit were certified to the railroad company

by the United States Government Land Office Department, on October 3rd, 1859, and approved by the Secretary on the same day; that the road was built and the grant earned;

That in 1858 the United States Land Office Department, passing upon the identical tract of land involved in this suit, decided that it belonged to the railroad company; that the Commissioner of the Land Office held, in March, 1872, that these lands fell within the railroad grant, and the same decision was rendered in March, 1881;

That the title in said railroad company having been repeatedly adjudicated by the Supreme Court of Louisiana and by the Land Office at Washington, its title is considered to be perfect; and the Court, thereupon, rendered judgment in favor of said railroad company for the 178.80 acres of land less the 35.18 acres aforesaid.

This judgment was rendered and signed, on the 14th of April, 1903.

An appeal was, thereupon, taken from the said judgment in this suit No. 5231 returnable to the Supreme Court of Louisiana on the second Monday of May, 1903. P. 21.

It further appears from the transcript that in the suit of the **Vicksburg, Shreveport & Pacific Railway Company, vs. Smith et al.** October term of 1889, Supreme Court of the United States, No. 276, the defendants in error moved to dismiss the writ of error for the reason that the money therein in dispute did not exceed the sum of $5,000.00, exclusive of interest, and in support of the said motion to dismiss they averred that they were, as the heirs of W. W. Smith, the owners of the 186 acres known as the Silver Lake, which is illegally withheld from them, "*and a part of which, containing forty acres, more or less, is in the unlawful possession of Geo. H. Turner, of the said Parish of Caddo and State of Louisiana, and a citizen of the said*

State, who refuses to deliver the said part of the said land to your petitioners, after amicable demand; such part is stated to be worth, at least, six hundred dollars." T. p. 23.

By the judgment in said suit said plaintiffs are declared to be the owners of the land in controversy and entitled to the possession of the same. Said lands being known and described as follows:

> "'Commencing at a rock, etc., containing 35.18 "acres situated in the Parish of Caddo,'" etc., etc. P. 23.

That, as shown by a bill of exceptions, the railroad company offered to show that the land claimed by plaintiffs under the grant from the United States Government was worth $10,000.00, whereupon "*plaintiff's counsel objected, upon the ground that the only part of the Silver Lake tract of 186 acres that was in controversy in this suit was the part alleged to be in the possession of the defendant, Turner, and it was admitted by the counsel for the defendant that said part or parcel of land was not worth exceeding two thousand dollars.* P. 24.

A certificate of the Commissioner of General Land Office of December 13th, 1887, shows that the nine lots in question were embodied in the grant to the railroad company and have been duly approved by the Honorable the Secretary of the Interior, on the 7th of October, 1859. P. 32.

Mortgage by the railroad company of this property in 1857. P. 34.

Decree of foreclosure upon said mortgage, July 3rd, 1879. P. 38.

May 31, 1856, telegram, Commissioner General Land Office to Register and Recorder, Monroe and New Orleans, Louisiana, ordering suspension of sale or location until further orders, of the lands in question. T., pages 42-43.

Letters containing the same instructions, June 16th, 1856. Pages 43-44.

Letter from the Commissioner General of the Land Office, Washington, June 16th, 1856, to the Governor of Louisiana, enclosing a printed copy of Public Act No. 25, making a grant of land to the State of Louisiana for the construction of certain railroads, approved June 3rd, 1856, said grant being made directly to the State. T. p. 44

Letter from the Commissioner General Land Office to Registers and Recorders in Louisiana, Oct. 22nd, 1856, directing that office to cease to permit location to entries by pre-emption for any purpose whatever of the land within fifteen miles of the route as definitely fixed by the said railroad

Certificate of the Governor of Louisiana, dated July 18th, 1884, showing the construction, completion and equipment of the railroad in question. P. 49.

Like certificates of the Governor of Louisiana, of Sept. 20th, 1872; 6th of November, 1883; 15th of January, 1884; 14th of March, 1884; 18th of July, 1884. T., pages, 49 *et seq.*

Sale of railroad, under decree of foreclosure. T., page 53.

Certificate to the Honorable the Secretary of the Interior, March 20th, 1872, that the Silver Lake lands were withdrawn from the market on the 31st day of May, 1856, for the benefit of the Vicksburg, Shreveport & Pacific Railroad, and on the 7th of October, 1859, it was approved to the State for the benefit of said road. P. 63.

Certificate of the Honorable the Secretary of the Interior, of March 18th, 1881, showing that the land in question lies within the grant to the said Railroad Company. P. 65.

Copy of petition filed Nov. 6th, 1885, of the **Heirs of W. W. Smith vs. Geo. A. Turner, U. S. Circuit Court,**

Western District of Louisiana, No. 80, setting up the acquisition by the said Smith of the land in question, to-wit: 186.57 acres, and averring the ownership of the petitioners in the same, and containing the following averment:

> *"A part of which, containing forty acres or more, is in the unlawful and wrongful possession of one Geo. A. Turner, of the said Parish of Caddo and State of Louisiana, and a citizen of the said State, who refuses to deliver the said part of said land to your petitioner, after amicable demand, as will be fully shown on the trial of this suit.*
>
> *"And they pray for citation of said Turner and for the recovery from him of said tract of forty acres."* T. p. 68

Judgment, in the said suit, was rendered, on the 4th of August, 1886, in favor of the said Heirs of Smith and against the said Railroad Company, for the tract of land in question, minutely described by metes, bounds and lines run, and containing 35.18 acres. P. 71.

By a bill of exceptions, filed in the said suit No. 80, it would appear that, on the trial of the said cause, counsel for the Railroad Company offered witnesses to prove that the value of the land in controversy was worth $10,000.00, *"whereupon plaintiff's counsel objected on the ground that the only part of said Silver Lake tract of 186 acres, that was in controversy in this suit, was the part alleged to be in the possession of the defendant, Turner, and it was admitted by the counsel for the defendant that the said part or parcel of land was not worth exceeding Two Thousand Dollars."*

And, thereupon, the plaintiff's objection to the said evidence was sustained, because the petition claimed only the number of acres of land held by her in the possession of Geo. A. Turner, the defendant, *"and that the judgment*

in the case, if for plaintiff, could affect only the lands held by Turner, etc." P. 72.

Copy of petition, **State of Louisiana vs. W. W. Smith, No. 5135, Eighteenth Judicial District Court for the Parish of Caddo, filed Dec. 3rd, 1857,** avers that the Legislature of the State of Louisiana passed an act, on the 30th of April, 1853, "authorizing the Register of the Land Office to sell certain *shallow lakes* in that State; which act was promulgated on the 23rd of June 1853, and provided that the Register of the Land Office at Baton Rouge be authorized *to sell shallow lakes in the said State, the area of which had been ascertained by surveys, and which are susceptible of being reclaimed, wholly or in part, by draining or leveeing; provided, that this act shall not apply to any swamp lands in this State; and provided that the said sale shall not be made until the lands have become the property of the State and been legally surveyed and the surveys recognized by the State.*" P. 259.

Petitioner avers that, on the 14th of May, 1853, Crenshaw, Register of the Land Office at Baton Rouge, pretending to act under the said law, sold to W. W. Smith, who pretended to purchase under said law, certain lands known as Silver Lake, containing 186.57 acres, at $1.25 per acre, for which a certificate of entry was issued by the Register.

Petitioner avers that the certificate of entry of Silver Lake was issued by Sigur, Register; but your petitioner avers that the sale of this Silver Lake land had been cancelled by Crenshaw, Register, on the 10th of June, 1853.

Petitioner avers that the sale, entry and patent were null, because the law had not been promulgated, at the date of the entries, and because this lake had not been surveyed, nor the survey recognized by the State, and because the patent to Silver Lake was issued by Sigur, Register, in error of the fact that the law had not been

promulgated, at the time of the entry, and also in error of the other fact that the said entry had been cancelled before the law had been promulgated.

Petitioner avers that a legal tender had been made to Smith of the money paid by him; and the petition prayed for the surrender of the patent and certificate of the entry and the cancellation of the same. P. 259.

Defendant, after the filing and dismissal of an exception, put in an answer, denying the allegations of the said petition, and claiming ownership of the land in question. P. 264.

Evidence of the tender to Smith, in gold, of the purchase price made by him, is shown at p. 266.

Act of the Legislature of Louisiana, of April 30th, 1853, authorizing the Register of the Land Office to sell the shallow lakes of the State, the area of *which had been ascertained by survey, and providing that such sale should not be made until the lands had become the property of the State, been legally surveyed and the surveys recognized by the State,* is found in transcript, p. 269.

Crenshaw, Register, testified that the entry to Smith was made on the 14th of May, 1853; that the same was made by him in error, the law not having been promulgated; that he made an entry to cancel, and, immediately, gave notice of the same.

The lands, in question, were never claimed as swamp lands, nor surveyed as such. P. 274.

Haralson, acting Register, testified that he had frequently been applied to by persons to enter lakes, but had refused to sell the same, they not having been selected as swamp, and, therefore, not the property of the State. P. 275.

Patent issued to W. W. Smith, on the 24th of February, 1855, showing "that said W. W. Smith had purchased,

with warrant No. 1, a certain shallow lake, known as 'Silver Lake,' situated," etc. P. 277.

The verdict of the jury, in suit No. 5135, was in favor of the plaintiff, ordering that the certificate and patent to W. W. Smith be annulled and delivered up. T. p. 277.

Judgment was rendered, upon said verdict, ordering that the certificate of entry in favor of W. W. Smith "*be annulled, avoided and delivered up; and it is further ordered, adjudged and decreed that the patent issued on the 24th day of February, 1855, in favor of W. W. Smith, the defendant, for Silver Lake, in the Parish of Caddo, township 18, ranges 13 and 14, containing 186.57 acres, and issued by L. J. Sigur, Register of the Land Office, be annulled and avoided and delivered up, and that the defendant pay the costs*"

Judgment, Nov. 24th, 1860. T. p. 278.

Motion for an appeal. T. p. 279.

The certificate of the Clerk of the Supreme Court of the State of Louisiana, showing that the case of the **State of Louisiana, Appellee, vs. W. W. Smith, Appellant,** was, on the 11th of August, 1869, *dismissed by consent of counsel.* T. p. 67.

Petition and writ of error to the United States Supreme Court, in the case of **Smith vs. Turner, No. 80,** P. 295.

The United States Supreme Court dismissed this writ of error, stating:

> "The judgment is limited to a piece of land, described by metes and bounds, and containing 35 18-100 acres, as shown by a map and survey of the same on file and of record in the cause. The value of that parcel of land is shown clearly to be not over $2,000, and this is conclusive as to our jurisdiction."
>
> **Vicksburg, etc., Railroad Co. vs. Smith,** 135 U. S., pp. 195-200.

The opinion and decree of the Supreme Court of Louisiana, in the instant case of the **V. S. & P. R. R. Co. vs. Tibbs et al., Heirs of W. W. Smith et al., substituted,** find that there was a judgment in favor of the State decreeing the annulment and cancellation of the patent issued to W. W. Smith and the granting of the land in question to the railroad;

That the Secretary of the Interior had made numerous decisions touching the land in question, which had obtained the force and effect of *stare decisis,* to the effect that the said lands had been earned by the Railroad Company as part of the judgment to it;

That, in the suit of **R. W. Smith et al.,** brought in 1885 in the Circuit Court, for forty acres of land, there was judgment for plaintiff for 35.18 acres, which judgment was taken by writ of error to the United States Supreme Court, where plaintiffs moved to dismiss, on the ground that the Court was without jurisdiction, for the reason that the value in dispute was that of the particular parcel of land occupied by Turner, and not that of the entire Silver Lake tract, and the Court, adopting that view, dismissed the writ.

Referring to the **V., S. & P. R. R. Co. vs. Smith,** 135 U. S. 195, the Louisiana Supreme Court, upon these facts, stated that they were unable to follow the reasoning by which the defendants endeavored to show that the judgment in the *Turner* case constituted *res adjudicata* with respect to that title, since, whatever force there may be in the general proposition that a judgment as to the ownership of a portion of a tract of land is conclusive between the same parties, claiming under the same titles, as to the ownership of the whole tract, the fact remains that the final judgment, in any particular case, is the law in that case, and that the thing adjudged in, and hence, the law of the

Turner case is precisely the reverse of that for which the defendants contend. P. 311.

> "And so, with regard to the question of estoppel. The proposition advanced in the **Turner** case, that the title to the whole Silver Lake tract was then at stake—not having been decided adversely to its contention—the present plaintiff is entitled to whatever advantage is to be derived from that ruling, whilst the present defendants, whose position was there sustained, must now take the consequences, and cannot be heard, here, to assert what they, there, denied." P. 311.

And the Louisiana Supreme Court, thereupon, considering the plea of *res adjudicata* and estoppel predicated by the Railroad Company on the judgment in the case of **Smith vs. Smith**, found that the State alleged that the Register of the State Land Office had assumed to sell the Silver Lake tract, under the authority of the Louisiana Act, No. 284 of 1853, which made special provision for the sale of "shallow lakes," as counter-distinguished from swamp and overflowed lands; and further alleged that the sale was made before the act was promulgated, and in disregard of its provisions;

And the Supreme Court finds that there was judgment for the State in the District Court, annulling the title set up by Smith, "being the identical title here set up by his heirs and their transferees." The Court said:

> "From the judgment so rendered, the administrator appealed to this Court, and in 1869, the appeal was dismissed by consent of counsel." T. p. 312.

The Court then meets the contention of counsel for the defendants, that a judgment so rendered does not constitute *res adjudicata*, determining the points raised, citing

authorities and deciding them adversely to defendant's contention, and saying:

"We, therefore, conclude that the plea of *res adjudi-*
"*cata,* as set up by the plaintiffs, is good.

"This conclusion disposes of the contention that "W. W. Smith bought the lands in question as swamp, "or overflowed lands, since the State, in a suit just "referred to, distinctly alleges that it was not so sold, "and its position was sustained by the judgment there-"in rendered. But if it had been sold as lands ac-"quired under the Acts of Congress of 1849 and 1850, "the result would be the same, since it belonged to "that class of land which, under the Act (of Lou-"isiana) No. 247 of 1855, could only have been sold "after having been surveyed, and one of the causes "of action set up by the State, in its suit against "Smith, and maintained by the judgment therein "rendered, was, that it had not been surveyed.

"Finally, it is argued that, under the Acts of Con-"gress of 1849 and 1850, title *in praesenti* to all "swamp and overflowed lands within its limits vested "in the State of Louisiana, without regard to selec-"tion or approval; that the land in question was of "that character, and that the State acquired it under "those acts, and, hence, that the United States could "not have granted, and the State (or the Railroad "Company) could not have acquired it under the Act "of June 3rd, 1856.

"The Acts of 1849 and 1850, were, clearly, not in-"tended to operate against the will of the State. On "the contrary, they distinctly left it to the State to "select, subject to the approval of the Secretary of "the Interior, the lands which it might consider with-"in the terms of the grant.

"Whether the State might have selected the tract "in question, and whether said selection might or "would have been approved, need not be here con-"sidered. In point of fact, not only was the selection "not made, and the approval not given, but the

"grantor and the grantee concurred in the view that "the tract fell within the terms of the Act of 1856, and "was granted to and acquired by the State of Lou- "isiana, as the Trustee of the V., S. & P. R. R. Co. "for the purpose of aiding in the construction of the "railroad which that company was to build." T., page 313.

And the Louisiana Supreme Court thereupon referred to the interpretation placed by this Court upon the Swamp Land Act of 1850, as given in the case of **Rogers Locomotive Machine Works vs. The American Emigrant Co.**, 164 U. S. 359, a summary of that decision being that the Swamp Land Act of 1850 gave an inchoate title to the State; that the identification of the lands by the Secretary of the Interior was necessary before the title became perfect; that the certificate of the Secretary, in 1858, that certain lands enured to the State, under the Railroad Act of 1856, was a decision that they were not embraced by the Swamp Land Act of 1850; that the acceptance by the State of lands certified to it by the Secretary is conclusive upon the State, and that a contract with a county for swamp and overflowed lands gives no better right than the county had to the lands which had been previously certified to the State. T. p. 313.

Further, the Louisiana Supreme Court states that, apart from the defenses which have been thus considered, there apppears to be no objection to plaintiff's title, which has more than once been affirmed by that Court. They refer to **Railroad vs. Sledge**, 41 La. An. 896; **Moore vs. Kemp**, 42 La. An. 1007; **State vs. Railroad**, 44 La. An. 981; **Railroad vs. Elmore**, 46 La. An. 1237.

And, thereupon, the judgment of the lower court was affirmed. T. p. 313.

THE PETITION FOR A REHEARING

Avers that the Court erred, First, in maintaining that the case of **Smith Heirs vs. Turner, No. 80,** was *res judicata* and, Second, in overruling the plea of *res adjudicata,* based upon the judgment in this suit No. 80. T. p. 314 *et seq.*

The rehearing was refused. Thereupon, defendants filed a petition and obtained an order for a writ of error to this Court. T. p. 318.

Attached to this petition is an assignment of errors, the defendants averring that the Court erred:

First. In overruling the pleas of *res adjudicata* and estoppel based upon the judgment in the case of **Smith vs. Turner, No. 80.**

Second. In refusing to hold that the issues set up in that case were *res adjudicata.*

Third. In holding that a verdict as to the ownership of part of a tract of land was not *res adjudicata* as to the remainder of the land.

Fourth. In refusing to hold that estoppel resulting from a judgment as against parties and privies extended to every material allegation made on the one side and denied on the other.

Fifth. **In refusing to hold that the Acts of Congress usually known as the Swamp Land Grants, were and are grants in praesenti, vesting at their date in the State and its assigns title to the land in controversy herein.**

Sixth. **In refusing to give effect to the reservation made in the Act of Congress of June 3rd, 1856, granting lands to the State of Louisiana in aid of railroads of all lands previously granted to the State by the Swamp Land Grants.**

Seventh. **In refusing to hold lands granted to the Swamp Land Grants, and in which third parties had acquired rights, could not be granted by any subsequent Act of Congress.**

Eighth. **In holding that the Act of Congress of June 3rd, 1856, granting land in aid of railroad, vested title to the land in controversy in the V., S. & P. Railroad, and that, despite the reservation in said Act, the said lands passed under it, although they had been previously granted to the State as Swamp Land Grants.**

Ninth. In holding that the V., S. & P. R. R. Co. has a right to the land in controversy.

Tenth. In holding that an action to annul a title to the land, being the real action, may, after the death of the defendant, be revived and prosecuted by citation only to the administrator of the deceased defendant, even though the heirs of said defendant are known and present or represented by agents, tutors or guardians.

Eleventh. In holding that action may be taken, proceedings had and orders made in a cause pending on appeal, in the absence of any party defendant.

Twelfth. In holding that the judgment in the suit of **State vs. Smith Heirs** had, and has, the force of the thing adjudged.

Thirteenth. In rendering a decree and in entering a judgment in favor of plaintiff against defendants, such judgment and decree being contrary to the law and the evidence. T., page 320.

May It Please the Court:

From the foregoing abstract of questions involved, and the manner in which they are raised, the following facts apppear:

In 1849 and 1850 the Federal Government granted to Louisiana, to aid in reclaiming the same, all swamp and overflowed lands in that State belonging to the public domain, and which lands, upon survey, selection and approval, were to vest in fee simple in the State, subject to disposal of the Legislature thereof.

April 30, 1853, the Louisiana Legislature authorized the Register of the State Land Office to sell the *shallow lakes* in that State, "provided the sale should not be made until the lands had become the property of the State and had been legally surveyed and the survey recognized."

This law was not promulgated until June 23, 1853.

May 14, 1853, *Crenshaw,* Register, certified that, under this inchoate act, W. W. Smith had purchased from the State 186.57 acres, known as Silver Lake.

This had not been surveyed and listed at the time.

June 6 1853, *Crenshaw,* Register, cancelled the sale to Smith, because made in error under a law which had not been promulgated, and served on Smith notice of this cancellation and making to him formal tender of the price paid.

Feb. 24, 1855, *Sigur,* Register, in ignorance of these facts, issued to said Smith a patent for said Silver Lake.

Dec. 3, 1857, the State of Louisiana brought suit against W. W. Smith to have cancelled the entry, entry certificate, and patent aforesaid, upon the grounds above stated. Answer was filed and a judgment duly rendered in favor of the State by the District Court, annulling the entry certificate and patent as prayed.

On Nov. 24, 1860, an appeal was taken to the Supreme Court of the State, where, Aug. 11, 1861, after some delay due to the pending of the Civil War, the appeal was dismissed and the judgment of the lower court became, and to this day has remained, final.

Meanwhile, the Silver Lake tract, under exact surveys, selection and approval, found to contain 178.80 acres, was, on June 3, 1856, donated to Louisiana to aid in the construction of the railroad in question, the State accepting said donation in 1857 and granting the same to the Railroad Company, the United States certifying to that company, by the identical numbers, the Silver Lake Lands involved in this suit.

Notwithstanding the judgment annulling Smith's patent, and the repeated confirmation of the Railroad Company's title, the Heirs of Smith, on the 6th of November, 1885, brought suit in the United States Circuit Court for the Western District of Louisiana, No. 80, of its docket, against Geo. A. Turner, who, they alleged, was in possession of 40 acres of said Silver Lake, and asking for recovery of said 40 acres. The Railroad Company, whose tenant Turner was, defended the suit. There was judgment against the company, presumably due to an erroneous certificate of the Clerk of the Louisiana Supreme Court, showing falsely that the case of **State vs. Smith** had not been disposed of, and thus causing the Judge to hold that Smith's entry had not been cancelled.

The writ of error taken to the United States Supreme Court from this judgment was dismissed upon the application of the Heirs of Smith, who averred that the only issue involved in the suit of **Smith vs. Turner** was the 35.18 acres in Turner's possession. 135 U. S. 200.

May 5, 1896, *this* suit was brought by the Railroad Company against the heirs, assigns and possessors of W. W.

Smith, in the District Court of Caddo Parish, claiming title to and possession of the Silver Lake property, to-wit: 178 80/100 acres, less the 35 18/100 acres recovered in the suit against Turner.

Defendants set up the **Turner** case as *res judicata*, and further alleged that Congress granted the lands in question to the State of Louisiana in 1849-1850; that the State sold them to W. W. Smith, as above set out; that the Act of Congress of March 2, 1855, confirmed all selections of swamp lands made by the State, and confirmed the title to Smith.

The Judge of the District Court rendered judgment in favor of the Railroad Company, as herein before set forth; and, on appeal, the Supreme Court of Louisiana, in a lengthy opinion, affirmed that judgment. The opinion of the Supreme Court of Louisiana is to be found at pp. 311 *et seq.* of the transcript.

The Court found no merit in defendant's contention that this title to the 178.80 acres had been maintained in the *Turner* case, because this Court had dismissed defendants' writ of error upon their representation that title to only 35.18 acres was involved, thereby depriving them of the judgment of this Court on the question of title. And the Supreme Court of Louisiana, upon the authority of its decisions, found that the judgment rendered in the case of **Smith vs. Smith**, annulling Smith's title, was final, and his heirs and assigns were estopped to again set up that title. The Court held that the land was not bought by Smith as swamp or overflowed land, but if it had been so purchased as lands acquired under the Acts of Congress of 1849-1850, "the result would have been the same, since it belonged to that class of land which, *under the Act of the General Assembly (of Louisiana)* No. 247 of 1855, could only have been sold after having been surveyed," etc. T. p. 312.

The Court disposes of the contention that title *in praesenti* to all the swamp land vested in the State, without approval or selection, in direct opposition to the very terms of those acts, by finding, *as a matter of fact,* that the "grantor and the grantee concurrred in the view that "that act fell within the term of the Act of 1856, and was "granted to and acquired by the State of Louisiana as the "trustee for the V., S. & T. R. R." T. p. 315.

And the Court, in support of its conclusions, cites 164 U. S. 559, **Rogers vs. American Emigrant Co.**

From this examination of the opinion of the Louisiana Court, it is evident that no Federal question is involved in the case.

The only assignments that can be considered are those referring to the erroneous construction of the Acts of Congress of 1849-1850 and 1856, but the decisions of the State Courts herein against the Smith title rest upon the decreed illegality of that title for violation, *not* of the Federal statutes, but of the Act of April 30, 1853 *of the Louisiana Legislature,* it having been decreed that Smith had purchased, in violation of the provisions of that act and prior to its promulgation. Hence, had title *in praesenti* vested in the State, the Louisiana Land Register could not sell to Smith under a State enactment not promulgated nor in violation of *its* express provisions.

It has been repeatedly held that the construction of a State statute belongs to the State courts, and is not a Federal question that can be reviewed by the Supreme Court, by writ of error, unless the State court gives such a construction to the State statute as to make it conflict with the Constitution or laws of the United States, and sustains its validity after giving it such construction, and therefore deprives a party of his rights under said Constitution and laws.

Ins. Co. vs. Treasurer, 11 Wall. 204.
Conn. vs. Woodruff, 153 U. S. 689.

Again, it has been stated, as a general rule, that, in order to give the Supreme Court jurisdiction of a writ of error to a State court, it must appear affirmatively, not only that a Federal question was presented for decision to the highest court of the State having jurisdiction, but that the decision of the Federal question was necessary to the determination of the case, and that it was actually decided, or that the judgment as rendered could not have been given without deciding it.

Johnson vs. Risk, 137 U. S. 300, 307.
Desausure vs. Gaillard, 127 U. S. 216.
N. O. vs. N. O. Waterworks Co., 142 U. S. 79.
O'Neil vs. Vermont, 144 U. S. 323, 336.
Northern Pacific R. R. Co. vs. Ellis, 144 U. S. 458.

And this rule has been followed to the point that,

"Even if a Federal question was raised in a State court, yet, if the case was decided on grounds broad enough in themselves to sustain the judgment without reference to the Federal question, the Supreme Court will not entertain jurisdiction."

Conn. vs. Woodruff, 153 U. S. 689.
Sherman vs. Grinnell, 144 U. S. 198.

"Or, at all events, it must appear from the record, by clear and necessary intendment, that the Federal question was directly involved, so that the State court could not have given judgment without deciding it; that is, a definite issue as to the possession of the right must be distinctly deducible from the record before the State court can be held to have disposed of such Federal question by its decision (**Hayward vs. Denny**, 158 U. S. 180, 183 and 184). Where no Federal question is dealt with, in the opinion of the appellate court of the State, no Federal question is presented by the record, then the writ of error will be dismissed."

Miller vs. Texas, 153 U. S. 535, 538.

But were this not the law, and had the Louisiana Supreme Court been compelled to rest its own decision upon an interpretation of the Acts of Congress, and had held that they were not grants *in praesenti*, vesting fee immediately in the State, but that such title only vested after survey and acceptance by the State and approval by the Secretary, although a Federal question would be thus raised, it would be so obviously correct, under the adjudications of this Court, that the cause would not be returned.

Rogers Locomotive Works vs. American Emigrant Co., 164 U. S. 559.

Michigan Land, etc., Co. vs. Rusk, 168 U. S. 592.

Brown vs. Hitchcock, 173 U. S. 476.

In **Equitable Life Assurance Society vs. Brown**, 187 U. S., p. 308, this Court said:

> "From the foregoing, it results that a claim under the Constitution and laws of the United States was made and decided in the court below, and if the fact that such a claim was formally made and disposed of below without reference to its substantial foundation, determined the question of jurisdiction, the motion to dismiss must be denied. But it is settled that not every mere allegation of a Federal question will suffice to give jurisdiction. There must be a real substantive question upon which the case may be made to turn; that is, a real, and not merely a formal, Federal question is essential to the jurisdiction of this Court. Stated in another form, the doctrine thus declared is, that, although in considering a motion to dismiss, it be found that a question adequate, abstractly considered, to confer jurisdiction, was raised, if it likewise appear that such question is wholly formal, is so absolutely devoid of merit as to be frivolous, or has been so explicitly foreclosed by a de-

cision or decisions of this Court as to leave no room for real controversy, the motion to dismiss will prevail.

N. O. Waterworks Co. vs. Louisiana, 185 U. S. 336, 345, and authorities there cited." P. 311.

In the case of **Richardson vs. The L. & N. R. R. Co.,** 169 U. S., p. 128, this Court said:

"But in sustaining the ruling of the trial court and excluding the alleged grant, the Supreme Court (of Florida) rested its decision on the want of authority to make such a grant as it held this to be. Therefore, the contention on behalf of the plaintiff in error is that this Court necessarily has jurisdiction.

"As, however, we entirely concur with the State Court in the view that the grant was not a grant of title, but of a mere license, easement or right of use, and no evidence of prior possession was offered, we need not consider whether the grant, as thus correctly construed, was valid or not, for, even if valid, the ruling on this record could not have been other than it was. That ruling was so obviously correct that we do not feel constrained to retain the case for further argument." P. 132.

We submit that the motion should prevail.

HARRY H. HALL,
FRANK P. STUBBS,
W. H. WISE,
Counsel.

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Supreme Court of the United States

OCTOBER TERM, 1904.

No. 233.

A. H. LEONARD, GEORGE R. WILSON, E. W. SMITH *ET AL.*

PLAINTIFFS IN ERROR,

versus

THE VICKSBURG, SHREVEPORT & PACIFIC RAILROAD COMPANY,

J. H. McCORMICK, RECEIVER,

AND

C. C. HARVEY.

BRIEF FOR DEFENDANT RAILROAD COMPANY, APPELLEE.

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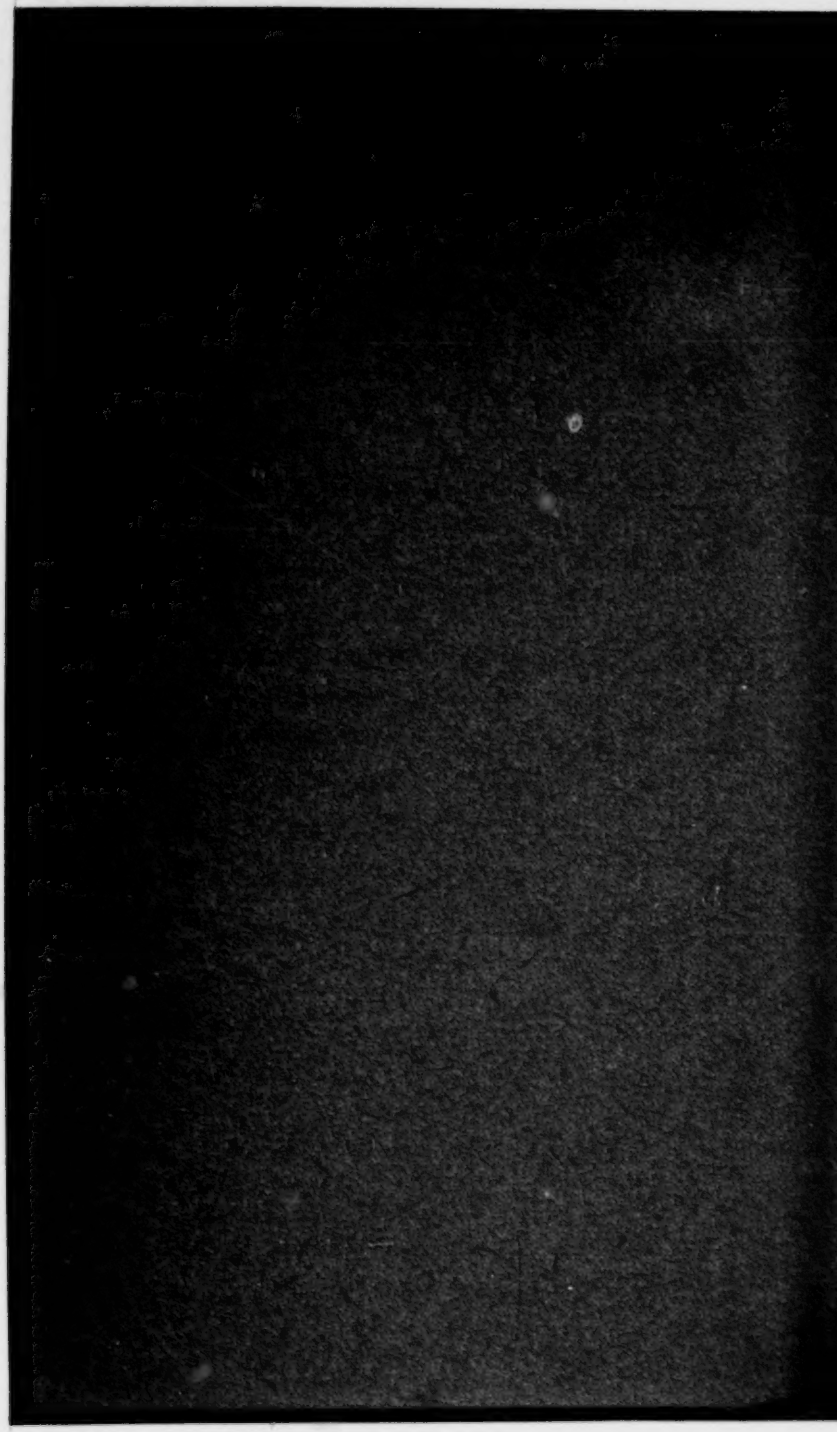

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STATEMENT OF FACTS AND PLEADINGS.

THE PETITION.

The Vicksburg, Shreveport & Pacific Railroad Company, a corporation organized under the laws of the State of

Louisiana, brought this suit in the First District Court of Louisiana, Parish of Caddo, No. 5231, against sundry possessors, Tibbs and others, asking that it be decreed to be the owner of and, as such, put in possession of the following tract of land situated in Caddo Parish, Louisiana, to-wit:

Lots 1, 2, 3, 4, 5, 6, 7, 8 and 9 of Section 31, Township 18, Range 13 west, containing 178 80-100 acres, less a certain parcel of land recovered by Robert N. Smith and others in the suit of Geo. A. Turner *et al.*, and which parcel of land originally formed a part of the said nine lots, and is fully described by metes and bounds, in the petition, and consists of 35 18-100 acres. Plaintiff, therefore, sues herein for 143 62-100 acres. (T., p. 1.)

The Answer.

The possessors, Tibbs and others, made defendants, disclaimed all interest in the property, averring that they were lessees and tenants of A. H. Leonard, Geo. R. Wilson, and the heirs of W. W. Smith, all of whom, for plea and answer to the plaintiff's suit, set up that they, being either the heirs of W. W. Smith or parties privy, instituted a suit, No. 80 on the docket of the Circuit Court of the United States for the Western District of Louisiana, against Geo. A. Turner, alleging and claiming ownership of the entire tract above described, which was known as Silver Lake, and praying to be restored to possession of about forty acres of said tract illegally held by the said Turner.

That, in said suit, Turner appeared, disclaiming title and averring that he was a tenant of the Vicksburg,

Shreveport & Pacific Railroad Company, plaintiff in this suit, and that, thereupon the said railroad company answered, claiming possession and ownership of the entire tract known as Silver Lake.

That, on final hearing, a judgment was rendered in said suit No. 80, in favor of the plaintiffs therein, said heirs of W. W. Smith, *decreeing them to be the owners* OF THE LAND IN CONTROVERSY IN SAID SUIT, *and they were put in possession of the same.*

That the said judgment is effective and final, and has the force and effect of *res adjudicata*, as against all parties to said suit and as against the claims of the plaintiffs herein, and estops it from asserting the said claim. (T., p. 6.)

Further, the said defendants answer that the State of Louisiana sold to W. W. Smith, on the 14th of May, 1853, the said tract of land claimed by plaintiff, for the price of $1.25 per acre, which was paid into the Treasury of the State by the said Smith, and was never returned to him; that, on the 24th of February, 1855, the State of Louisiana, through its constituted authorities, issued a patent to said tract of land to the said Smith.

That the State of Louisiana claimed and acquired the said tract of land as swamp and overflowed land, granted to the State of Louisiana by Acts of Congress of 1849 and 1850, as the Swamp Land Grants, *and that the State sold the said lands to the said Smith as swamp and overflowed lands.*

That all sales of land in Louisiana made as swamp and overflowed land, whether made by the United States or by

the State of Louisiana, and whether the land sold was of that character or not, were confirmed by the Acts of Congress approved March 2nd, 1855, entitled "An act for the relief of purchasers and locators of *swamp and overflowed lands.*"

That the said Act of Congress of March 2nd, 1855, was extended so as to protect sales after its passage, by the Act of Congress of March 2nd, 1857, to confirm all selections of *swamp and overflowed lands* by the several States under the Acts of Congress of 1849 and 1850.

That the said Act of Congress of March 2nd, 1855, confirmed the title of the said W. W. Smith to the said tract of land, whether said land belonged to the State of Louisiana, under the Swamp Land Grant of Congress, or whether it belonged to the United States, and that the said Smith thus acquired a title to the said land, both by purchase from the State of Louisiana and by confirmation by Congress.

That in the case of **R. V. Smith et al. vs. Geo. A. Turner,** the Vicksburg, Shreveport & Pacific Railroad Company substituted, No. 80 on the docket of the United States Circuit Court for the Western District of Louisiana, said railroad company "*claimed a part of the same tract of land now in dispute,*" upon the same title upon which they now rely and which is set forth above.

That judgment was rendered against the said railroad company in said suit No. 80, sustaining the title set up by these defendants, who plead said judgment as *res adjudicata* and estoppel. (T., pages 8, 9 and 10.)

One of the said defendants, Albert H. Leonard, further answering, sets up, in addition to the defense just recited, of his co-defendants, that the said railroad company sued out a writ of error to the Supreme Court of the United States, from said judgment, in said suit No. 80, and that the said Supreme Court dismissed the said writ and affirmed the said judgment, which, thereupon, became final and conclusive. (P. 10.)

PLEA OF RAILROAD COMPANY.

Thereupon J. H. McCormick, receiver for the Vicksburg, Shreveport & Pacific Railroad Company, filed his plea and exception of *res adjudicata* to defendant's answer and plea therein of ownership of the said lands, averring that, in a suit entitled **State of Louisiana vs. W. W. Smith et al.**, No. 5135 of the docket of the District Court of Caddo Parish, Louisiana, filed in 1857, said defendant put at issue the validity and legality of his title to the land described in plaintiff's petition herein, and claimed by virtue of the certificate and patent described in said petition, and, upon final hearing, a judgment was rendered in said suit decreeing said certificate and patent null and void, and decreeing the cancellation of the same and ordering same to be delivered to the State of Louisiana, plaintiff therein.

That in the said suit, No. 5135, defendant obtained an order of appeal from the judgment of Court rendered therein to the Supreme Court, which said appeal was dismissed, and that said judgment is *res adjudicata*, and a perpetual bar to defendant's rights of action. (T., p. 14.)

Opinion and Judgment of the District Court of Caddo Parish.

The opinion and judgment of the Judge of the First Judicial District Court of Caddo Parish, in this suit, No. 5231, is substantially as follows:

Defendant's plea of *res adjudicata* is based upon the fact that, in suit No. 80, United States Circuit Court, **Smith et al.** sued **Turner** for 35.18 acres in the tract of 178.80 acres, known as *Silver Lake*, and recovered a judgment against the Vicksburg, Shreveport & Pacific Railroad Company therefor, as Turner's lessor;

That, on the trial of that cause, counsel for the Vicksburg, Shreveport & Pacific Railroad Company offered to prove that the entire tract of 178.80 acres was worth $10,000.00, whereupon counsel for **Smith et al.** objected upon the ground that the title to the 178.80 acres was not in controversy, but only the title to the 35.18 acres, being the tract sued for. That the question was thus directly put at issue whether the suit involved the title to the entire tract or merely to those particular 35.18 acres for which Turner was sued. The Court says:

> "The same parties who now contend that the decision "in that case constitutes the thing adjudged as to the "entire tract of 178.80 acres, at that time successfully "contended that nothing was at issue except the ques- "tion of right of ownership to 35.18 acres. In his "decision on that point, the presiding Judge said:
>
> " 'The testimony of the above named witnesses was " 'not heard because the petition claimed only the " 'number of acres of land held by or in the possession

" 'of Geo. A. Turner, the defendant; *that the judgment* " '*in this case, if for the plaintiff, could affect only* " '*the land held by Turner.*' " (P. 15.)

The Court says that, when the suit was carried to the Supreme Court of the United States on a writ of error, the attorneys for the Smith heirs moved to dismiss the writ of error, contending that there was no appellate jurisdiction of the Supreme Court, *as the only question at issue was the possession of 35.18 acres of land,* worth not over $2,000.00, and there was no controversy relating to the entire tract of 178.80 acres, worth $10,000.00; and that, in the motion to dismiss the writ of error, they say:

> "It is therefore submitted that no competent question is raised upon the record *except as to property worth about $2,000.00,* and, therefore, the writ of error should be dismissed."

It adds that the Supreme Court of the United States concurred in this view of counsel and dismissed the writ of error, holding that no property was at issue or could be affected by the judgment in the case, except that particular tract of 35.18 acres;

> That "it is now asked of this Court, in this case, "that the said judgment in suit No. 80, awarding to "the Smith heirs 35.18 acres of land, be so extended "as to cover the entire tract of 178.80 acres, and to "ignore that part of the same case in which it is de- "cided, both by the Circuit Court and the United "States Supreme Court, that the decision in that case "in no manner involves the entire tract."
>
> "And thereupon the plea of *res adjudicata* filed by defendant herein is overruled." (T., p. 16.)

As to the plea of *res adjudicata* set up by the Railroad Company against the Smith heirs, the Court finds that, upon the 30th of April, 1853, *an act* was passed by the *Legislature of Louisiana* authorizing the Register of the State Land Office to sell the *shallow lakes* in this State, *provided that such sales should not be made until the lands had become the property of the State and had been legally surveyed and the property recognized;*

That said Act was not promulgated until June 23rd, 1853;

That, on May 14th, 1853, *Crenshaw,* Register, certified that *W. W. Smith* had purchased from the State and had paid $1.25 per acre for the shallow lake known as Silver Lake, in the Parish of Caddo, containing 186.57 acres; that the evidence showed that this area had not been surveyed and listed, at that time, as required;

That a patent issued, on the 24th of February, 1855, for this property, as "SHALLOW LAKE LAND," pursuant to the said Act of the Legislature, *which lake was not claimed to be swamp and overflowed lands.*

That *Crenshaw,* Register of the State Land Office, testified in the case of **The State vs. Smith** that the land sold to Smith *was never claimed as* SWAMP LAND *nor sold as such;*

That *Harleson,* who was Register at the time, testified, in that case, on the 19th of December, 1857, as follows:

> "In the warrant book there is opposite Smith's "entry of Silver Lake, the following words, in the "handwriting of W. H. Crenshaw, Register, to-wit:

" 'This sale is cancelled, because sold in error, the
" 'law not having been promulgated. June 6th, 1853.'
"(Signed) Wm. H. Crenshaw, Register."

That the evidence of Crenshaw shows that the notice of cancellation was served on Smith;

That the evidence further shows that a legal tender of the money paid was made December 3rd, 1857;

That the petition in the suit of the **State of Louisiana vs. W. W. Smith,** sets forth that the Register issued the patent to W. W. Smith to Silver Lake in error. *First,* because the law had not been promulgated; *Secondly,* because the lake had not been surveyed, nor had the surveys ever been recognized by the State; and, *Thirdly,* because the patent was issued by L. J. Sigur, Register, in error of the fact that the law had not been promulgated at the time of the entry, and of the other fact that the entry had been cancelled before the law had been promulgated (p. 17);

That judgment was rendered, on the 24th of November, 1860, in favor of the State cancelling the Smith entry;

That an appeal was taken by Smith, Administrator, returnable to the Supreme Court of Louisiana, on the second Monday of July, 1861, which appeal was not heard by reason of the Civil War, and was not determined until August 11th, 1869, when the said appeal was dismissed, leaving the judgment of the District Court, cancelling the Smith entry, in full force;

That an erroneous certificate of the Clerk of the Supreme Court filed in the case of **Robert N. Smith vs. Geo. A. Turner, No. 80,** as above, caused that record to show that

the case of the **State vs. W. H. Smith** had not been finally disposed of;

That, in the opinion of the Court, it was this certificate which caused the Judge, in the suit No. 80, to hold that the entry of W. W. Smith had not been cancelled;

That in the case of the **Texas & Pacific Railway Company vs. Robert N. Smith et al.**, the United States Circuit Court of Appeals said, in speaking of the title of W. W. Smith:

> "We find that entry to have been cancelled and annulled, the suit of the State and adjudication therein having become final by the action of the highest Court of the State." (P. 18; *Vide* 33, Cir. Ct. Appeals, p. 648.)

And the Court further finds that the title of the Vicksburg, Shreveport & Pacific Railroad Company in and to the lands in question is perfect;

That, the said railroad company was chartered by Act No. 228 of the Acts of the Legislature of Louisiana of 1853;

That, on the 3rd of June, 1856, Congress donated to Louisiana, for the express purpose of aiding in the construction of a railroad on the Texas Line to Greenwood, Shreveport and Monroe to a point on the Mississippi River opposite Vicksburg, every alternate section addition of land for six sections in width on each side of the road;

That in 1857 the State accepted the donation, and granted the lands to the railroad company, the Legislature, at the same session, authorizing the said company to mortgage the said lands; that the said lands were duly selected

and listed as required; that the identical numbers involved in this suit were certified to the railroad company by the United States Government Land Office Department, on October 3rd, 1859, and approved by the Secretary on the same day; that the road was built and the grant earned;

That, in 1858, the United States Land Office Department, passing upon the identical tract of land involved in this suit, decided that it belonged to the railroad company; that the Commissioner of the Land Office held, in March, 1872, that these lands fell within the railroad grant, and the same decision was rendered in March, 1881;

That the title in said railroad company having been repeatedly adjudicated by the Supreme Court of Louisiana and by the Land Office at Washington, its title is considered to be perfect.

And the Court thereupon rendered judgment in favor of said railroad company for the 178.80 acres of land, less the 35.18 acres aforesaid.

This judgment was rendered and signed on the 14th of April, 1903.

An appeal was, thereupon, taken from the said judgment in this suit No. 5231, returnable to the Supreme Court of Louisiana on the second Monday of May, 1903. (P. 21.)

THE OPINION AND DECREE OF THE SUPREME COURT OF LOUISIANA.

On appeal of the said case of the **V. S. & P. R. R. Co. vs. Tibbs et al., Heirs of W. W. Smith et al., substituted,** find that there was a judgment in favor of the State de-

creeing the annulment and cancellation of the patent issued to W. W. Smith and the granting of the land in question to the railroad;

That the Secretary of the Interior had made numerous decisions touching the land in question, which had obtained the force and effect of *stare decisis*, to the effect that the said lands had been earned by the Railroad Company as part of the judgment to it;

That, in the suit of **R. W. Smith et al.**, brought in 1885 in the Circuit Court, for forty acres of land, there was judgment for plaintiff for 35.18 acres, which judgment was taken by writ of error to the United States Supreme Court, where plaintiffs moved to dismiss, on the ground that the Court was without jurisdiction, *for the reason that the value in dispute was that of the particular parcel of land occupied by Turner, and not that of the entire Silver Lake tract*, and the Court, adopting that view, dismissed the writ. (135 U. S. 195.)

The Louisiana Supreme Court, upon these facts, stated that they were unable to follow the reasoning by which the defendants endeavored to show that the judgment in the **Turner** case constituted *res adjudicata* with respect to that title, since, whatever force there might be in the general proposition that a judgment as to the ownership of a portion of a tract of land is conclusive between the same parties, claiming under the same titles, as to the ownership of the whole tract, the fact remains that the final judgment, in any particular case, is the law in that case, and that the thing adjudged in, and hence, the law of the **Turner**

case is precisely the reverse of that for which the defendants contend.

> "And so, with regard to the question of estoppel. The proposition advanced in the **Turner** case, that the title to the whole Silver Lake tract was then at stake—not having been decided adversely to its contention—the present plaintiff is entitled to whatever advantage is to be derived from that ruling, whilst the present defendants, whose position was there sustained, must now take the consequences, and cannot be heard, here, to assert what they, there, denied." (P. 311.)

And the Louisiana Supreme Court, thereupon, considering the plea of *res adjudicata* and estoppel predicated by the Railroad Company on the judgment in the case of **State vs. Smith,** found that the State alleged that the Register of the State Land Office had assumed to sell the Silver Lake tract, under the authority of the Louisiana Act, No. 284 of 1853, which made special provision for the sale of "shallow lakes," as contra-distinguished from swamp and overflowed lands; and further alleged that the sale was made before the act was promulgated, and in disregard of its provisions;

And the Supreme Court finds that there was judgment for the State in the District Court, annulling the title set up by Smith, "being the identical title here set up by his heirs and their transferees." The Court said:

> "From the judgment so rendered, the administrator appealed to this Court, and in 1869, the appeal was dismissed by consent of counsel." (T., p. 312.)

The Court then meets the contention of counsel for the defendants, that a judgment so rendered does not constitute *res adjudicata*, determining the points raised, citing authorities, and deciding adversely to defendant's contention, saying:

"We, therefore, conclude that the plea of *res adju-*
"*dicata*, as set up by the plaintiff, *is good.*

"This conclusion *disposes of the contention that W. W. Smith bought the lands in question as swamp,* "*or* OVERFLOWED LANDS, since the State, in a suit just "referred to, distinctly alleges that it was not so sold, "and its position was sustained by the judgment there-"in rendered. But if it had been sold as lands ac-"quired under the Acts of Congress of 1849 and 1850, "the result would be the same, since it belonged to "that class of land which, under the Act (of Louis-"iana) No. 247 of 1855, could only have been sold "after having been surveyed, and one of the causes "of action set up by the State, in its suit against "Smith, and maintained by the judgment therein "rendered, was, that it had not been surveyed.

"Finally, it is argued that, under the Acts of Con-"gress of 1849 and 1850, title *in præsenti* to all swamp "and overflowed lands within its limits vested in the "State of Louisiana, without regard to selection or "approval; that the land in question was of that char-"acter, and that the State acquired it under those "acts, and, hence, that the United States could not "have granted, and the State (or the Railroad Com-"pany) could not have acquired it under the Act of "June 3rd, 1856.

"The Acts of 1849 and 1850, were, clearly, not in-"tended to operate against the will of the State. On "the contrary, they distinctly left it to the State to "select, subject to the approval of the Secretary of

"the Interior, the lands which it might consider with-
"in the terms of the grant.

"Whether the State might have selected the tract
"in question, and whether said selection might or
"would have been approved, need not be here con-
"sidered. In point of fact, not only was the selection
"not made, and the approval not given, but the grantor
"and the grantee concurred in the view that the tract
"fell within the terms of the Act of 1856, and was
"granted to and acquired by the State of Louisiana,
"as the Trustee of the V., S. & P. R. R. Co. for the
"purpose of aiding in the construction of the railroad
"which that company was to build." (T., page 313.)

And the Louisiana Supreme Court thereupon referred to the interpretation placed by this Court upon the Swamp Land Act of 1850, as given in the case of **Rogers Locomotive Machine Works vs. The American Emigrant, 164 U. S. 359,** a summary of that decision being that the Swamp Land Act of 1850 gave an inchoate title to the State; that the identification of the lands by the Secretary of the Interior was necessary before the title became perfect; that the certificate of the Secretary, in 1858, that certain lands enured to the State under the Railroad Act of 1856, was a decision that they were not embraced by the Swamp Land Act of 1850; that the acceptance by the State of lands certified to it by the Secretary is conclusive upon the State, and that a contract with a county for swamp and overflowed lands gives no better right than the county had to the lands which had been previously certified to the State. (T., p. 313.)

Further, the Louisiana Supreme Court stated that, apart from the defenses which have been thus considered, there appeared to be no objection to plaintiff's title, which had more than once been affirmed by that Court. They refer to **Railroad vs. Sledge, 41 La. An. 896; Moore vs. Kemp, 42 La. An. 1007; State vs. Railroad, 44 La. 981; Railroad vs. Elmore, 46 La. An. 1237.**

And thereupon the judgment of the lower court was affirmed. (T., p. 313.)

THE TRANSCRIPT

further shows:

By a bill of exceptions, filed in the said suit No. 80, it would appear that, on the trial of the said cause, counsel for the Railroad Company offered witnesses to prove that the value of the land in controversy was worth $10,000.00,

> *"whereupon plaintiff's counsel objected, on the ground that the only part of said Silver Lake tract of 186 acres that* WAS IN CONTROVERSY IN THIS SUIT, *was the part alleged to be in the possession of the defendant, Turner, and it was admitted by the counsel for the defendant that the said part or parcel of land was not worth exceeding Two Thousand Dollars."*

And, thereupon, the plaintiff's objection to the said evidence was sustained, because the petition claimed only the number of acres of land held by her in the possession of Geo. A. Turner, the defendant, *"and that the judgment in the case, if for plaintiff,* COULD AFFECT ONLY THE LANDS HELD BY TURNER, *etc."* (P. 72; N., p. 24.)

See likewise same statement in **Vicksburg & R. R. vs. Smith, 135 U. S. 199**, where writ of error was dismissed on motion of Smith for the reasons stated in said bill of exceptions.

A certificate of the Commissioner of General Land Office of December 13th, 1887, shows that the nine lots in question were embodied in the grant to the railroad company, and have been duly approved by the Honorable the Secretary of the Interior, on the 7th of October, 1859. (P. 32.)

Mortgage by the railroad company of this property in 1857. (P. 35.)

Decree of foreclosure upon said mortgage, July 3rd, 1879. (P. 38.)

May 31, 1856, telegram, Commissioner General Land Office to Register and Recorder, Monroe and New Orleans, Louisiana, ordering suspension of sale or location until further orders, of the lands in question. (T., pages 42-43.)

Letters containing the same instructions, June 16th, 1856. (Pages 43-44.)

Letter from the Commissioner General of the Land Office, Washington, June 16th, 1856, to the Governor of Louisiana, enclosing a printed copy of Public Act No. 25, making a grant of land to the State of Louisiana for the construction of certain railroads, approved June 3rd, 1856, said grant being made directly to the State. (T., p. 44.)

Letter from the Commissioner General Land Office to Registers and Recorders in Louisiana, Oct. 22nd, 1856, directing that office to cease to permit location to entries

by pre-emption for any purpose whatever of the land within fifteen miles of the route as definitely fixed by the said railroad.

Certificate of the Governor of Louisiana, dated July 18th, 1884, showing the construction, completion and equipment of the railroad in question. (P. 49.)

Like certificates of the Governor of Louisiana, of Sept. 20th, 1872; 6th of November, 1883; 15th of January, 1884; 14th of March, 1884; 18th of July, 1884. (T., pages 49 *et seq.*)

Certificate to the Honorable the Secretary of the Interior, March 20th, 1872, that the Silver Lake lands were withdrawn from the market on the 31st day of May, 1856, for the benefit of the Vicksburg, Shreveport & Pacific Railroad, and on the 7th of October, 1859, it was approved to the State for the benefit of said road. (P. 63.)

Certificate of the Honorable the Secretary of the Interior, of March 18th, 1881, showing that the land in question lies within the grant to the said Railroad Company. (P. 65.)

Copy of petition filed Nov. 6th, 1885, of the **Heirs of W. W. Smith vs. Geo. A. Turner, U. S. Circuit Court.**

Copy of petition, **State of Louisiana vs. W. W. Smith, No. 5135, Eighteenth Judicial District Court for the Parish of Caddo, filed Dec. 3rd, 1857,** avers that the Legislature of the State of Louisiana passed an act, on the 30th of April, 1853, "authorizing the Register of the Land Office to sell certain SHALLOW LAKES in that State; which act was promulgated on the 23rd of June, 1853, and provided

that the Register of the Land Office at Baton Rouge be authorized to sell *shallow lakes* in the said State, the area of which had been ascertained by surveys, and which are susceptible of being reclaimed, wholly or in part, by draining or leveeing; provided, THAT THIS ACT SHALL NOT APPLY TO ANY SWAMP LANDS in this State; and provided that the said sale shall not be made until the lands have become the property of the State and been legally surveyed and the surveys recognized by the State." (P. 259.)

Petitioner avers that, on the 14th of May, 1853, Crenshaw, Register of the Land Office at Baton Rouge, pretending to act under the said law, sold to W. W. Smith, who pretended to purchase, under said law, certain lands known as Silver Lake, containing 186.57 acres, at $1.25 per acre, for which a certificate of entry was issued by the Register.

Petitioner avers that the certificate of entry of Silver Lake was issued by Sigur, Register; but your petitioner avers that the sale of this Silver Lake land had been cancelled by Crenshaw, Register, on the 10th of June, 1853.

Petitioner avers that the sale, entry and patent were null, because the law had not been promulgated, at the date of the entries, and because this lake had not been surveyed, nor the survey recognized by the State, and because the patent to Silver Lake was issued by Sigur, Register, in error of the fact that the law had not been promulgated at the time of the entry, and also in error of the other fact that the said entry had been cancelled before the law had been promulgated.

Petitioner avers that a legal tender had been made to Smith of the money paid by him; and the petition prayed for the surrender of the patent and certificate of the entry and the cancellation of the same. (P. 259.)

Defendant, after the filing and dismissal of an exception, put in an answer, denying the allegations of the said petition, and claiming ownership of the land in question. (P. 264.)

Evidence of the tender to Smith, in gold, of the purchase price made by him, is shown at page 266.

Act of the Legislature of Louisiana, of April 30th, 1853, authorizing the Register of the Land Office to sell the *shallow lakes* of the State, the area of *which had been ascertained by survey, and providing that such sale should not be made until the lands had become the property of the State, been legally surveyed and the surveys recognized by the State,* is found in transcript, page 269.

Crenshaw, Register, testified that the entry to Smith was made on the 14th of May, 1853; that the same was made by him in error, the law not having been promulgated; that he made an entry to cancel, and, immediately gave notice of the same.

The lands, in question, were never claimed as swamp lands, nor surveyed as such. (P. 274.)

Haralson, acting Register, testified that he had frequently been applied to by persons to enter lakes, but had refused to sell the same, they not having been selected as swamp, and, therefore, not the property of the State. (P. 275.)

Patent issued to W. W. Smith, on the 24th of February, 1855, showing "that said W. W. Smith had purchased with warrant No. 1, a certain SHALLOW LAKE, known as 'Silver Lake,' situated," etc. (P. 277.)

The verdict of the jury, in suit No. 5135, was in favor of the plaintiff, ordering that the certificate and patent to W. W. Smith be annulled and delivered up. (T., p. 277.)

Judgment was rendered, upon said verdict, ordering that the certificate of entry in favor of W. W. Smith

> *"be annulled, avoided and delivered up; and it is further ordered, adjudged and decreed that the patent issued on the 24th day of February, 1855, in favor of W. W. Smith, the defendant, for Silver Lake, in the Parish of Caddo, township 18, ranges 13 and 14, containing 186.57 acres, and issued by L. J. Sigur, Register of the Land Office, be annulled and avoided and delivered up, and that the defendant pay the costs."*

Judgment, November 24th, 1860. (T., page 278.)

Motion for an appeal. (T. page 279.)

The certificate of the Clerk of the Supreme Court of the State of Louisiana, showing that the case of the **State of Louisiana, Appellee, vs. W. W. Smith, Appellant,** was, on the 11th of August, 1869, *dismissed by consent of counsel.* (T., p. 67.)

ASSIGNMENT OF ERRORS.

Upon the refusal by the Supreme Court of Louisiana of an application for a rehearing of the instant cause,

defendants filed a petition and obtained an order for a writ of error to this Court. (T., poges 318-320.)

Attached to this petition is an assignment of errors, the defendants averring that the Supreme Court of Louisiana erred:

First. In overruling the pleas of *res adjudicata* and estoppel based upon the judgment in the case of **Smith vs. Turner, No. 80, United States Circuit Court.**

Second. In refusing to hold that the issues set up in the Federal Court in that case were *res adjudicata.*

Third. In holding that a verdict as to the ownership of part of a tract of land was not *res adjudicata* as to the remainder of the land.

Fourth. In refusing to hold that estoppel resulting from a judgment as against parties and privies extended to every material allegation made on the one side and denied on the other.

Fifth. In refusing to hold that the Acts of Congress usually known as the Swamp Land Grants, were and are grants in *praesenti,* vesting at their date in the State and its assigns title to the land in controversy herein.

Sixth. In refusing to give effect to the reservation made in the Act of Congress of June 3rd, 1856, granting lands to the State of Louisiana in aid of railroads of all lands previously granted to the State by the Swamp Land Grants.

Seventh. In refusing to hold lands granted to the Swamp Land Grants, and in which third parties had

acquired rights, could not be granted by any subsequent Act of Congress.

Eighth. In holding that the Act of Congress of June 3rd, 1856, granting land in aid of railroad, vested title to the land in controversy in the V., S. & P. Railroad, and that, despite the reservation in said Act, the said lands passed under it, although they had been previously granted to the State as Swamp Land Grants.

Ninth. In holding that the V., S. & P. R. R. Co. has a right to the land in controversy.

Tenth. In holding that an action to annul a title to the land, being the real action, may, after the death of the defendant, be revived and prosecuted by citation only to the administrator of the deceased defendant, even though the heirs of said defendant are known and present or represented by agents, tutors or guardians.

Eleventh. In holding that action may be taken, proceedings had and orders made in a cause pending on appeal, in the absence of any party defendant.

Twelfth. In holding that the judgment in the suit of State vs. Smith Heirs had, and has, the force of the thing adjudged.

Thirteenth. In rendering a decree and in entering a judgment in favor of plaintiff against defendants, such judgment and decree being contrary to the law and the evidence. (T., page 320.)

May It Please the Court:

From the foregoing abstract of questions involved, and the manner in which they are raised, the following facts appear:

In 1849 and 1850 the Federal Government granted to Louisiana, to aid in reclaiming the same, all swamp and overflowed lands in that State belonging to the public domain, and which lands, upon survey, selection and approval, were to vest in fee simple in the State, subject to disposal of the Legislature thereof.

April 30, 1853, the Louisiana Legislature authorized the Register of the State Land Office to sell the *shallow lakes* in that State, "provided the sale should not be made until the lands had become the property of the State and had been legally surveyed and the survey recognized."

This law was not promulgated until June 23rd, 1853.

May 14, 1853, *Crenshaw*, Register, certified that, under this inchoate act, W. W. Smith had purchased from the State 186.57 acres, known as Silver Lake.

This had not been surveyed and listed at the time.

June 6, 1853, *Crenshaw*, Register, cancelled the sale to Smith, because made in error under a law which had not been promulgated, and served on Smith notice of this cancellation and making to him formal tender of the price paid.

February 24, 1855, *Sigur*, Register, in ignorance of these facts, issued to said Smith a patent for said Silver Lake.

December 3, 1857, the State of Louisiana brought suit against W. W. Smith to have cancelled the entry, entry

certificate, and patent aforesaid, upon the grounds above stated. Answer was filed and a judgment duly rendered in favor of the State by the District Court, annulling the entry certificate and patent as prayed.

On November 24, 1860, an appeal was taken to the Supreme Court of the State, where, August 11, 1861, after some delay, due to the pendency of the Civil War, the appeal was dismissed and the judgment of the lower court became and, to this day, has remained final.

Meanwhile, the Silver Lake tract, under exact surveys, selection and approval, found to contain 178.80 acres, was, on June 3, 1856, donated to Louisiana to aid in the construction of the railroad in question, the State accepting said donation in 1857 and granting the same to the Railroad Company, the United States certifying to that company, by the identical numbers, the Silver Lake lands involved in this suit.

Notwithstanding the judgment annulling Smith's patent, and the repeated confirmation of the Railroad Company's title, the Heirs of Smith, on the 6th of November, 1885, brought suit in the United States Circuit Court for the Western District of Louisiana, No. 80, of its docket, against Geo. A. Turner, who, they alleged, was in possession of 40 acres of said Silver Lake, for recovery of said 40 acres. The Railroad Company, whose tenant Turner was, defended the suit. There was judgment against the company, presumably due to an erroneous certificate of the Clerk of the Louisiana Supreme Court, showing falsely that the case of **State vs. Smith** had not been disposed of,

and thus causing the Judge to hold that Smith's entry had not been cancelled.

The writ of error taken to the United States Supreme Court from this judgment was dismissed upon the application of the Heirs of Smith, who averred that the only issue involved in the suit of **Smith vs. Turner** was the 35.18 acres in Turner's possession. (135 U. S. 195.)

May 5, 1896, *this* suit was brought by the Railroad Company against the heirs, assigns and possessors of W. W. Smith, in the District Court of Caddo Parish, claiming title to and possession of the Silver Lake property, to-wit: 178.80 acres, less the 35.18 acres recovered in the suit against Turner.

Defendants set up the **Turner** case as *res judicata*, and further alleged that Congress granted the lands in question to the State of Louisiana in 1849-1850; that the State sold them to W. W. Smith, as above set out; that the Act of Congress of March 2, 1855, confirmed all selections of swamp lands made by the State, and confirmed the title to Smith.

The Judge of the District Court rendered judgment in favor of the Railroad Company, as hereinbefore set forth; and, on appeal, the Supreme Court of Louisiana, in a lengthy opinion, affirmed that judgment. The opinion of the Supreme Court of Louisiana is to be found at page 311 *et seq.* of the transcript. (N. 112 La. Rep. 55.)

The Court found no merit in defendant's contention that this title to the 178.80 acres had been maintained in the Turner case, because this Court had dismissed defendants'

writ of error upon their representation that title to only 35.18 acres was involved, thereby depriving them of the judgment of this Court on the question of title. And the Supreme Court of Louisiana, upon the authority of its decisions, found that the judgment rendered in the case of **Smith vs. Smith,** annulling Smith's title, was final, and his heirs and assigns were estopped to again set up that title. The Court held that the land was not bought by Smith as swamp or overflowed land, but if it had been so purchased, as lands acquired under the Acts of Congress of 1849-1850, "the result would have been the same, since it belonged to that class of land which, *under the Act of the General Assembly (of Louisiana)* No. 247 of 1855, could only have been sold after having been surveyed," etc. (T., page 312.)

The Court disposes of the contention that title *in praesenti* to all the swamp land vested in the State, without approval or selection, in direct opposition to the very terms of those acts, by finding, *as a matter of fact,* that the "grantor and the grantee concurred in the view that that "act fell within the term of the Act of 1856, and was "granted to and acquired by the State of Louisiana as the "trustee for the V., S. & P. R. R." (T., page 315.)

And the Court, in support of its conclusions, cites 164 U. S. 559, **Rogers vs. American Emigration Co.**

From this examination of the opinion of the Louisiana Court, it is evident that no Federal question is involved in the case.

The first, second, third and fourth assignments are taken to the failure of the Louisiana Supreme Court to

give full faith due it to the judgment of the United States Circuit Court in suit No. 80, wherein it was decreed that Smith's heirs and assigns were the owners of forty acres of the original Silver Lake tract.

But full effect has been given to *that* judgment, which was duly executed. It is contended, however, that, in the subsequent suit in the State courts, for the remainder of the Silver Lake tract, those courts should have held themselves bound by the *question of law* determined in the Federal Court, whose determination of the title should have the authority of the thing adjudged.

Pretermitting all consideration of the application of the general jurisprudence of this court to the practice of the jurisprudence of Louisiana courts, it is, under certain limitation, true that, in the United States Courts—

> "The general principle announced in numerous causes is that a right, question or fact distinctly put in issue and directly determined by a court of competent jurisdiction, as a ground of recovery cannot be disputed in a subsequent suit between the same parties or their privies; and even if the second suit is for a different cause of action, the right, question or fact, once so determined, must, as between the same parties or their privies, be taken as conclusively established, so long as the judgment in the first suit remains unmodified."
>
> **Southern Pacific vs. United States, 168 U. S. 1-48.**

The fact remains that, in particular cases, this doctrine has been modified by this Court:

> "In considering the operation of this judgment, it should be borne in mind, as stated by counsel, that

there is a difference between the effect of a judgment as a bar or estoppel against the prosecution of a second action upon the same claim or demand, and its effect as an estoppel in another action between the same parties upon a different claim or cause of action. In the former case, the judgment, if rendered upon the merits, constitutes an absolute bar to a subsequent action. It is a finality as to the claim or demand in controversy, concluding parties and those in privity with them, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose. Thus, for example, a judgment rendered upon a promissory note is conclusive as to the validity of the instrument and the amount due upon it, although it be subsequently alleged that perfect defenses actually existed, of which no proof was offered, such as forgery, want of consideration, or payment. If such defenses were not presented in the action and established by competent evidence, the subsequent allegations of their existence is of no legal consequence. The judgment is as conclusive, so far as future proceedings at law are concerned, as though the defenses never existed. The language, therefore, which is so often used, that a judgment estops not only as to every ground of recovery or defense actually presented in the action, but also as to every ground which might have been presented, is strictly accurate, when applied to the demand or claim in controversy. Such demand or claim, having passed into judgment, cannot again be brought into litigation between the parties in proceedings at law upon any ground whatever.

"But where the second action between the same parties is upon a different claim or demand, the judgment in the prior action operates as an estoppel only as to those matters in issue or points controverted upon the determination of which the finding or verdict was rendered.

"In all cases, therefore, where it is sought to apply the estoppel of a judgment rendered upon one cause of action to matters arising in a suit upon a different cause of action, the inquiry must always be as to the point or question actually litigated and determined in the original action; not what might have been thus litigated and determined. Only upon such matters is the judgment conclusive in another action."

"The difference in the operation of a judgment in the two classes of cases mentioned is seen through all the leading adjudications upon the doctrine of estoppel.

"These cases, usually cited in support of the doctrine that the determination of a question directly involved in one action is conclusive as to that question in a second suit between the same parties upon a different cause of action, negative the proposition that the estoppel can extend beyond the point actually litigated and determined.

"It is not believed that there are any cases going to the extent that, because in the prior action a different question from that actually determined might have arisen and been litigated; therefore, such possible question is to be considered as excluded from consideration in a second action between the same parties on a different demand, although loose remarks looking in that direction may be found in some opinions. On principle, a point not in litigation in one action cannot be received as conclusively settled in any subsequent action upon a different cause, because it might have been determined in the first action.

"Various considerations, other than the actual merits, may govern a party in bringing forward grounds of recovery or defense in one action, which may not exist in another action upon a different demand, such as the smallness of the amount or the value of the property in controversy, the difficulty of obtaining the necessary evidence, the expense of litigation, and his own situation at the time. A party

acting upon considerations like these ought not to be precluded from contesting in a subsequent action other demands arising out of the same transaction."

Cromwell vs. County of Sac, 94 U. S. 351.

Approved in **Keokuk, etc., vs. Missouri, 152 U. S. 315,** and in **Roberts vs. Northern Pacific R. R., 158 U. S., p 27.**

"The law in respect to estoppel by judgment is well settled, and the only difficulty lies in the application of the law to the facts. The particular matter in controversy in the adverse suit was the triangular piece of ground, which is not the matter of dispute in this action. The judgment in that case is, therefore, not conclusive in this as to matters which might have been decided, but only as to matters which were, in fact, decided."

Last Chance Mining Company vs. Tyler Mining Company, 157 U. S. 683-687.

Now, the case at bar is clearly an exceptional case. In their brief, at page 21 thereof, counsel for plaintiff in error say:

"Had either party raised other issues than those "raised in the former suit, as, for instance, title by "prescription or by tax sale, or by purchase from a "stranger, or from antagonist's author, the former "judgment would not be *res adjudicata* as to any "of such issues, because they were not raised or de- "cided in such former judgment. But it so happened "in this case that no issues are in fact raised that "were not raised and decided in the former case. "The judgment, therefore, in that case being *res ad- "judicata* of all these issues, they are not open to "controversy in this case."

Is not counsel mistaken?

When the Judge of the Circuit Court, in suit No. 80, decided the issue of the Smith title to the 38.15 acres in controversy, there was in the record an erroneous certificate to the effect that the suit of **State vs. Smith** was still pending undecided in the Louisiana Supreme Court, when, as a matter of fact, that suit had, long before, been dismissed, and the judgment of the lower court, cancelling and annulling the Smith title, had become final.

When, therefore, this suit was brought by the Railroad Company to vindicate its title to the remaining 143.62 acres of the Silver Lake tract, and the defendants set up the original Smith patent, the Railroad Company met the defense wit ha plea of *res adjudicata*, averring that, in the suit of the **State vs. Smith**, a final judgment had been rendered decreeing the cancellation and annulment of said patent and entry.

This raised a new issue which had neither been raised nor determined in suit No. 80.

I submit, therefore, that this was "a point not in litigation" in the former action, and that it "cannot be received as conclusively settled" in this subsequent action.

But would this *res adjudicata*, even in the Federal Courts, apply in the instant case?

When, in the United States Circuit Court, counsel for the Railroad Company asserted that the pending suit for forty acres would be determinative of the ownership of the entire tract, and offered to prove that its value was $10,000, "plaintiffs' counsel objected, on the ground that the only

"part of said Silver Lake tract *that was in controversy in "this suit* was the part alleged to be in the possession of "the defendant Turner."

And the objection was sustained, the Court holding that the evidence was not admissible, because "the judgment "in the case, if for plaintiff, COULD EFFECT ONLY THE "LANDS HELD BY TURNER."

And, on motion of same defendants, suggesting the same limitation, the writ of error was dismissed by this Court.

I submit that it would be intolerable to permit a litigant to successfully maintain that a judgment obtained and executed by him for 35.18 acres of land was conclusive of the title of the remaining 143.62 acres of the same tract, after having, upon his affirmative judicial allegation of the fact, caused the Court, in the first writ, to rule and decide that its judgment "COULD AFFECT ONLY" the 35.18 acres.

I submit that a litigant cannot be permitted to deny his deliberate judicial averments and admissions, especially when made for the purpose and with the effect of depriving an opponent of a legal right, which but for those averments and admissions, it would or might have enjoyed. So, therefore, if the plea of *res adjudicata* were to be determined solely under the jurisprudence of this Court, I submit that it could not be maintained in this exceptional case.

But the failure of the Louisiana Courts to maintain this plea is, in no manner, a failure to give effect to the judgment of the Federal Court. The judgment of that Court was duly enforced and fully executed.

"When the Supreme Court of the State fails to give proper effect to a decree of the Circuit Court of the United States, this court has jurisdiction over its judgments to correct the error."

Dowell vs. Applegate, 152 U. S., p. 327.

But in that case the State Supreme Court treated the decree in question as a nullity and refused to give effect to the same. There was no question of the effect of that judgment upon another and distinct suit brought in the State Court.

The failure to consider suit No. 80 as *res adjudicata* in the subsequent suit was simply the determination by the Louisiana Court of a question of Louisiana law and practice. It considered the Federal judgment precisely as it would have considered the judgment of a State Court. It decided the plea of *res adjudicata* as it had always been determined by the Supreme Court of Louisiana, and without reference to the particular court which rendered the judgment pleaded in bar.

The *Louisiana jurisprudence* on the question of *res adjudicata* differs from that of this Court, which has recognized the difference.

"It is our opinion that the decision made in the case, in 12 Howard, was not intended to reverse the decree in 6 Howard, and that it cannot be so applied as *res adjudicata* to the case we are now trying.

"We will now show the difference as to the character in which Mrs. Gaines then sued and that in which she now does, in connection with the law of Louisiana,

as to what constitutes *res adjudicata* and what does not. In the first suit, her demand was for one-half and four-fifths of another half of the property owned by her father when he died. She then claims as the donee of her mother to the one-half, and as *forced heir of her father* to four-fifths of another half of his estate.

"Now, she claims as universal legatee and legitimate child of her father, under his will of the 13th of July, 1813, which has been admitted to probate by the Supreme Court of Louisiana, and ordered to be executed as such.

"The difference between the two cases is just that which the law of Louisiana will not permit, the decision in the first to be placed against her in this case as *res adjudicata*.

"It is declared in the Article 2265 of the Louisiana Code:

" 'That the authority of the thing adjudged takes place only with respect to what was the OBJECT OF THE JUDGMENT. The thing demanded must be the same; the demand must be founded on the same cause of action; the demand must be made between the same parties, and affirmed by them against each other in the same quality.' "

Gaines vs. Hennen, 24 Howard, 579.

True it is, that, later, this Court expressed the opinion that the law of Louisiana was in accord with the rulings of this Court:

"It follows, then, that the mere fact that the demand in this case is for a tax for one year and the demands in the adjudged cases were for the taxes of other years, does not prevent the operation of the thing adjudged, if, in the prior cases, the question of exemption was necessarily presented and determined upon

identically the same facts upon which the right of exemption is now claimed.

"And the law of Louisiana is exactly in accord with the rulings of this Court, for, as said by the Supreme Court of Louisiana in *Heroman et al. vs. Louisiana Institute, etc.*, 34 La. An. 805-814," etc.

N. O. vs. Citizens' Bank, 167 U. S., pages 371-398.

But more recently the Louisiana Supreme Court, in the case of **State vs. American Sugar Refining Company**, 108 La., page 603, determined that the cause of action for the suits for licenses of different years, although based upon identically the same statutes and controlled by the same conditions and facts, are not the same causes of action, and said:

"There is not in the case of **Heroman vs Institute**, 34 La. An. 805, anything conflicting with wl we have said in this opinion." (P. 610.)

THE LAW OF LOUISIANA.

Civil Code, Art. 2286 (2265):

"The authority of the thing adjudged takes place only with respect to what was the object of the agreement. The thing demanded must be the same; the demand must be founded on the same cause of action; the demand must be between the same parties, and formed by them against each other in the same quality."

"The plea of *res judicata* is without force, unless the *object demanded* in the above suit was *precisely* the same as that demanded in the action pending."

Edwards vs. Ballard, 14 La. An. 362.

"The plea of *res adjudicata* is not tenable. To sustain that plea there must be identity of parties, of capacity, of object and of cause of action. One of these, at least, is lacking here. Marcadé says:

"La cause qui doit être la même dans les deux demandes pour que la seconde soit écartée comme déjà jugée, c'est le principe qui engendre immédiatement le droit q'une partie prétend exercer et que l'autre lui conteste—du reste, l'objet se trouve par la réponse à cette question: Que demande le plaideur? et on trouve la cause par la réponse à cette autre question: sur quoi le plaideur fond-t-il immédiatement sa prétension?'

"The relator has carefully excluded from his present demand the salary for the two quarters which formed the object of the demand in the first suit, and upon which there was no adjudication. It seems more probable that, on the part of the respondent, a plea has been confounded with a principle, and that in pleading the judgment in the previous cause as an estoppel, he meant rather that the principle or ruling made by this Court, as then constituted, was conclusive of the right of the relator, or his want of right, on the principle of *stare decisis.*"

State ex rel. Collins vs. Jumel, Auditor, 30 La. An. 863.

And the Court held that the former judgment had not the authority of the thing adjudged.

In the first suit of *Collins vs. Clinton, Auditor,* 26 An. 406, the relator applied for and obtained a *mandamus* to compel the Auditor to warrant on the State Treasury for the two quarters of his judicial salary ending respectively December 31, 1872, and March 31, 1873.

Judge Collins served, under a commission of 1868, up to and until December 14, 1872, when his Court was abolished by the Legislature.

In the above suit, he contended that he was entitled to his salary, notwithstanding that legislative enactment, from the 14th of December until the 31st of March, 1873, claiming that his office was a constitutional one, giving him a vested right to his emoluments during the term fixed by the Constitution.

The Supreme Court of Louisiana, in the *26 Annual* case, decided that he was not entitled to his salary after the 14th of December, 1872. The same Supreme Court, in the *30 Annual* case, held that the plea of *res adjudicata* was not tenable, because the thing sought to be recovered was not the same, he having eliminated, in the second suit, the quarters for which the Supreme Court in the former case had decided he could not recover.

The two decisions are in absolute conflict. In the first, the Supreme Court held that no salary could be recovered after the abolition of the office, while in the second decision it was held that he could recover, and that the plea of *res adjudicata* was not good because suit was brought for different installments of the salary.

"The authority of the thing adjudged must be tested by the requisites of Article 2286 of the Civil Code. The decree is not final unless it falls within the terms of that Article."

Semple vs. Scarborough, 44 La. An. 257.

In this case the tutor of minor children intervened and claimed that certain property sought to be foreclosed had been mortgaged to him as tutor to secure the sum of $3577.21, with interest, and that this mortgage was held as collateral security for a debt of $3468.86. To this demand of the intervenor, the plaintiff pleaded *res adjudicata*, alleging that the tutor, intervenor, had presented an

account of tutorship in which was carried the claim of $3468.66 as due to plaintiff, and that a judgment of the lower Court rendered in favor of the tutor had been reversed by the Supreme Court in the *44th Annual*. The Court held that the issues in the two cases were different; that the action in the latter case was to recover on a note secured by mortgage and, in the other contention, arose about the indebtedness of a succession and the mode of enforcing collection.

> "A decree of *res adjudicata* applies only to matters directly adjudicated. Of two questions, the Court decides one only, and expressly so states; the other question remains undecided and unaffected. The plea of *res adjudicata* does not apply unless the decided question is inseparably connected and carries with it a decision of the accompanying question which was not, in our view, the case here—*i. e.*, in the pending case. Actually adjudicated issues must, in general, be involved in the final judgment in order to be conclusive.
>
> "In our judgment, the basis of the first suit was deficient; the defendant could not be forced to sign the contract of lease. This conclusion did not carry with it a decision of the other issues in case the plaintiff had a right remaining in spite of the fact that the defendant declined to sign the contract of lease."
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> **Laroussini vs. Werlein, 50 La. An. 640.**

In the first suit it was averred that there was a verbal agreement to renew a lease, and the suit was brought to compel the signing of this alleged lease. It was decided that defendant could not be ordered to do so. Thereupon,

the second suit was brought to recover upon the alleged verbal contract and to enforce the same.

"In order that there should be *res adjudicata*, the thing demanded and the cause of action must be the same, and they are not the same in two suits for the licenses of different years.

"In a suit, under a statute imposing a license on refiners of sugar *eo nomine*, the defense being that a refiner of sugar is a manufacturer and, as such, exempt from license taxation, and that, as a consequence, the statute imposing the license is inconsistent with the Constitution, there being no question as to what constitutes a refiner of sugar, the process of refining sugar being the same in all refineries, the sole matter involved is the ascertainment of the meaning of the word 'manufacturer' as used by the Constitution; that is to say, a matter of interpretation of the Constitution—*a question purely of law.*" (*Syllabus.*)

(*"The two license laws involved in the construction of this matter were virtually the same, the latter being substantially a re-enactment of the former, the process used in refining sugar having not changed.*)

"The law of *res adjudicata* is stated with great simplicity and precision by *Article 2286, C. C.*—which formula was borrowed by our Code from the Code Napoleon (*Article 1351*), by the Code Napoleon from Pothier, and by Pothier from the Roman Jurisconsults. It brings out with great distinctness the salient feature of the law of *res adjudicata*, namely, the identity that must exist as to the thing demanded, cause of action, and persons in the two suits * * * and to the same effect are our own decisions. * * *

"The exception of the thing ajdudged is *stricti juris* and, if there should be any doubt as to the identity of the things claimed, or of the persons claiming them, it cannot be maintained. 3 La. 529.

"The plea of *res adjudicata* is without force unless the object demanded in the former suit was precisely

the same as that demanded in the action pending. 14 La. An. 362.

"The only test as to the effect of a decree is its finality as to the matters embraced in it, and its having the requisites of Article 2265 (2286) of the Civil Code. 3 La. An. 203.

"The authority of *res adjudicata* takes place only with respect to what was the object of the judgment. 1 La. An. 92, 30 La. An. 259, 21 La. An. 355, 30 La. An. 861, 41 La. An. 996, 19 La. An. 327, and innumerable other cases.

"Our Court has never wavered that we know of in the rigid execution of the three identities. The thing demanded in the first suit was a certain sum of money which has been paid, and which is neither being demanded a second time nor sought to be recovered back. In two suits for the recovery of the licenses of different years, the statute imposing the license may be said to be the same in the two suits, but the act of the defendant by which the debt for the license is incurred is, each year, a separate, independent act similar to, but not the same as the act by which the debt of the license of the preceding year was incurred.

"In successive suits for cases of this kind one of the causes generative of the cause of action, namely, the law, is the same, but the other generative cause, namely, the act of the defendant, is different, and *res adjudicata* does not obtain.

"It is undeniable that the issue as to whether or not defendant is a manufacturer does occur in both cases, but this issue, as we shall show presently, involves only a question of law, *and there can be no objection to litigating a second time a question of law*, provided the litigation is in connection with different facts. (My italics.)

"The law by virtue of which the object of the judgment is delivered is no part of the object of the judgment. It is only one of the reasons for judgment, and *res judicata* does not take place with respect to the

reasons for the judgment, but only with respect to what was the object of the judgment. *Res judicata* deals, if we may so express ourselves, with the decree of the Court, as contradistinguished from the judgment of the Court. To give it a wider scope than this is to confound it with *stare decisis*. The office and function and utility of *res judicata* is not to settle law questions, but to lend stability to a decree in order that such decree may have effect. *If the second suit leaves the successful litigant in the first suit in the undisturbed possession of the thing decreed to be delivered in the first suit*, there is no ground for *res judicata*. The thing demanded is not then the same. This is well illustrated by the case of *State vs. Jumel, 30 La. An. 861.* There an officer brought suit for that part of his salary accrued up to the time of filing suit, and brought subsequently a second suit for that part of the salary accrued thereafter, and was met in both suits with the defense that the office had been abolished and that no salary was due. The Court held that the part of the salary sought to be recovered in the first suit was not included in the demand of the second suit, and that there was not identity of thing demanded. (My italics.)

"In the case of *City of New Orleans vs. Citizens' Bank of New Orleans, 167 U. S. 371*, the Court conceded that two suits for the taxes of the different years contained different demands, but held that the authority of the thing adjudged took place nevertheless. The conclusion is in conflict with the provisions of the Code, by which the thing demanded and the cause of action (that is, the demand), must be the same. * * *

"Right or wrong, this Court would be bound by the Code, but on the authority of pure reason the Code is presumably right. The decided weight of authority is on its side.

"But the Court, in our humble opinion, is in error in supposing that it is possible for the question to come up under identical circumstances and condi-

tions in two suits, whereof the demands are different. Unless the same thing is being demanded, and for the same purpose, and the demand is being resisted on the same ground of defense, there are not identical circumstances and conditions in the two suits. There may be close similarity. The demands for taxes for different years may be as near alike as two peas, but they are not identical. The identity would be in the defense, but the defense is only a reason for judgment and forms no part of the judgment.

"A different judgment might be rendered on it in the second suit and the full validity, force and effect of the judgment in the first suit remain unimpaired.

"The thing adjudged takes place only with respect to what forms the object of the judgment; and where the defendant contents himself with resisting the demand of the plaintiff, no matter on what ground, the object of the judgment continues to be the demand of the plaintiff. That particular demand which, allowed or rejected, can never again be urged, but the fact of its allowance or rejection, no matter on what ground, cannot preclude the bringing forward another and distinct demand, no matter how closely similar.

"We conclude that the plea of *res judicata* is not well founded, and we pass to the second question in the suit, etc.!"

State ex rel. American Sugar Refining Co., 108 La. Reports, 603 et seq.

And, in this identical cause from which the writ of error is presented, the Louisiana Supreme Court decided that the judgment under discussion is not *res adjudicata* under the law of Louisiana.

Vicksburg, etc., R. R. vs. Tibbs, 112 La. R. 51 (T., pp. 111 *et seq.*).

"The construction by the courts of a State of its Constitution and statutes is, as a general rule, binding

on the Federal courts. We may think that the Supreme Court of the State has misconstrued its Constitution or its statutes, but we are not at liberty to therefor set aside its judgments. That Court is the final arbiter as to such questions."

Forsythe vs. Hammond, 166 U. S. 506-518.

The principal remaining assignments of error are those referring to the erroneous construction of the Acts of Congress of 1849-1850 and 1856; but the decisions of the State courts herein against the Smith title rest upon the decreed illegality of that title for violation, *not* of the Federal statutes, but of the Act of April 30, 1853, *of the Louisiana Legislature,* it having been decreed that Smith had purchased, in violation of the provisions of that act and prior to its promulgation. Hence, had title *in praesenti* vested in the State, the Louisiana Land Register could not sell to Smith under a State enactment not promulgated nor in violation of *its* express provisions.

It has been repeatedly held that the construction of a State statute belongs to the State courts, and is not a Federal question that can be reviewed by the Supreme Court, by writ of error, unless the State court gives such a construction to the State statute as to make it conflict with the Constitution or laws of the United States, and sustains its validity after giving it such construction, and therefore deprives a party of his rights under said Constitution and laws.

Ins. Co. vs. Treasurer, 11 Wall. 204.
Conn. vs. Woodruff, 153 U. S. 689.

Again, it has been stated, as a general rule, that, in order to give the Supreme Court jurisdiction of a writ of error to a State court, it must appear affirmatively, not only that a Federal question was presented for decision to the highest court of the State having jurisdiction, but that the decision of the Federal question was necessary to the determination of the case, and that it was actually decided, or that the judgment as rendered could not have been given without deciding it.

Johnson vs. Risk, 137 U. S. 300, 307.
Desausure vs. Gaillard, 127 U. S. 216.
N. O. vs. N. O. Waterworks Co., 142 U. S. 79.
O'Neil vs. Vermont, 144 U. S. 323, 336.
Northern Pacific R. R. Co. vs. Ellis, 144 U. S. 458.

And this rule has been followed to the point that,

"Even if a Federal question was raised in a State court, yet, if the case was decided on grounds broad enough in themselves to sustain the judgment without reference to the Federal question, the Supreme Court will not entertain jurisdiction."

Conn. vs. Woodruff, 153 U. S. 689.
Sherman vs. Grinnell, 144 U. S. 198.

"Or, at all events, it must appear from the record, by clear and necessary intendment, that the Federal question was directly involved, so that the State court could not have given judgment without deciding it; that is, a definite issue as to the possession of the right must be distinctly deducible from the record before the State court can be held to have disposed of such Federal question by its decision **(Hayward vs. Denny, 158 U. S. 180, 183 and 184)**. Where no Federal question is dealt with, in the opinion of the

appellate court of the State, no Federal question is presented by the record, then the writ of error will be dismissed."

Miller vs. Texas, 153 U. S. 535, 538.

But were this not the law, and had the Louisiana Supreme Court been compelled to rest its own decision upon an interpretation of the Acts of Congress, and had held that they were not grants *in praesenti*, vesting fee immediately in the State, but that such title only vested after survey and acceptance by the State and approval by the Secretary, although a Federal question would be thus raised, it would be so obviously correct, under the adjudications of this Court, that the cause would not be returned.

Rogers Locomotive Works vs. American Emigrant Co., 164 U. S. 559.
Michigan Land, etc., Co. vs. Rusk, 168 U. S. 592.
Brown vs. Hitchcock, 173 U. S. 476.

In **Equitable Life Assurance Society vs. Brown, 187 U. S., p. 308**, this Court said:

"From the foregoing, it results that a claim under the Constitution and laws of the United States was made and decided in the court below, and if the fact that such a claim was formally made and disposed of below without reference to its substantial foundation, determined the question of jurisdiction, the motion to dismiss must be denied. But it is settled that not every mere allegation of a Federal question will suffice to give jurisdiction. There must be a real substantive question upon which the case may be made to turn; that is, a real, and not merely a formal, Federal question is essential to the jurisdiction of this Court. Stated in another form, the doctrine thus

declared is, that, although in considering a motion to dismiss, it be found that a question adequate, abstractly considered, to confer jurisdiction, was raised, if it likewise appear that such question is wholly formal, is so absolutely devoid of merit as to be frivolous, or has been so explicitly foreclosed by a decision or decisions of this Court as to leave no room for real controversy, the motion to dismiss will prevail.

N. O. Waterworks Co. vs. Louisiana, 185 U. S. 336, 345, and authorities there cited." (P. 311.)

In the case of **Richardson vs. The L. & N. R. R. Co., 169 U. S., p. 128,** this Court said:

"But in sustaining the ruling of the trial court and excluding the alleged grant, the Supreme Court (of Florida) rested its decision on the want of authority to make such a grant as it held this to be. Therefore, the contention on behalf of the plaintiff in error is that this Court necessarily has jurisdiction.

"As, however, we entirely concur with the State Court in the view that the grant was not a grant of title, but of a mere license, easement or right of use, and no evidence of prior possession was offered, we need not consider whether the grant, as thus correctly construed, was valid or not, for, even if valid, the ruling on this record could not have been other than it was. That ruling was so obviously correct that we do not feel constrained to retain the case for further argument." (P. 132.)

Further, it is claimed in the twelfth assignment of error that the Supreme Court in holding that the judgment in the suit of *State vs. Smith* has the force and effect of the thing adjudged.

The reasons of the Court on this question of Louisiana law and practice are doubtless conclusive, but the same questions and the same title were considered by the Circuit Court of Appeal, Fifth Circuit, and that Court reached the same conclusion.

Texas & Pacific Ry. Co. vs. Smith et al., 33 U. S. Circuit Court of Appeals, p. 648.

I respectfully submit that there is involved, in this cause, no Federal question, but solely the interpretation of Louisiana statutes; that the judgment annulling and cancelling Smith's patent, more than forty years ago, is conclusive upon his heirs and assigns, and that they are estopped from complaining of that judgment in this suit; and that if the matter could even be considered by this Court your Honors would reach the same conclusion reached by the Supreme Court of Louisiana.

I submit that the writ of error should be dismissed, or, in the alternative, that the judgment of the Supreme Court of Louisiana should be affirmed.

Respectfully submitted,

HARRY H. HALL,
FRANK P. STUBBS,
W. H. WISE,
Attorneys for V., S. & P. Railway Company.

April, 1905.

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Supreme Court, U. S.
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Supreme Court of the United States

OCTOBER TERM, 1905.

No. 233.

A. H. LEONARD, GEORGE R. WILSON, R. W. SMITH, *ET AL.*

PLAINTIFFS IN ERROR,

vs.

THE VICKSBURG, SHREVEPORT & PACIFIC RAILROAD COMPANY,

J. H. McCORMICK, RECEIVER,

AND

C. C. HARVEY.

BRIEF FOR DEFENDANT RAILROAD COMPANY, APPELLEE.

FRANK P. STUBBS,
W. H. WISE,
Attorneys for V., S. & P. Railway Company.

To the Honorable the Supreme Court of the United States:—

Mr. W. H. Wise and Mr. Frank P. Stubbs, as Counsel preparing the petition in this cause, who tried the same in the Court of Original Jurisdiction, as well as in the Supreme Court of Louisiana, where they presented an exhaustive brief on the facts and the law, respectfully attaching hereto their said brief, present the same as supplemental to the argument heretofore filed in your Honorable Court by Mr. H. H Hall and this Counsel, and pray that the same be duly considered.

Respectfully submitted,

Frank P. Stubbs,

W. H. Wise,

Attorneys for V., S. & P. Ry. Co., Appellee.

SUPREME COURT OF LOUISIANA

No. 14,855.

V. S. & P. RAILROAD COMPANY

versus

ALBERT TIBBS Et Als.

Appeal from District Court, Caddo Parish,
Hon. J. D. Watkins Sitting as Parish Judge.

ARGUMENT FOR PLAINTIFF, APPELLEE.

SYLLABUS.

1. Under the Act of the 3rd of June, 1856, lists of land selected by the grantee and certified by the General Land Office, convey as complete title as patent. U. S. Rev. Stat. Sec. 2449; No. 6 Land Decis. 543; 115 U. S. 102; 116 U. S. 381.

2. By second section of the Swamp Land Act of 1849-1850, the power and the duty devolved upon the Secretary of the Interior, as the head of the Department which administered the affairs of the public lands, of determining what lands were of the description granted by the Swamp Land Act, and made his office the tribunal, whose decision on the subject was to be controlling. 93 U. S. 169.

3. The exclusion of the lands in dispute from the Swamp Lands selected and patented to the State, and those included in the selection as lands coming within the canal grant, with the approval of such selection by the Interior Department and the certification thereof to the grantee, operated to pass the title thereto as completely as could have been done by formal patent. 149 U. S. 79.

4. The Secretary of the Interior was made the final arbiter of the nature of a given piece of land, whether swamp or not. His judgment on the question was final. 80 U. S. 72; 93 U. S. 169.

5. Now, the selection by the State of certain lands, under the grant of June 3rd, 1856, with the approval of the Secretary of the Interior, and the certification of the Department that they were covered by the granting act, is such an adjudication of the question as excludes the introduction of parol evidence to contradict. 149 U. S. 79.

6. Parol evidence is admissible to show, in opposition to the concurrent action of Federal and State officers having authority in the premises, that certain lands were in fact, at the date of the Swamp Land Act of 1850, swamp and overflowed lands. 159 U. S. 332.

7. The certificate of the Secretary of the Interior in 1858, that certain lands inured to the State under the Railroad Act of 1856, was a decision that they were not embraced by the Swamp Land Act of 1850. 164 U. S. 559.

8. The acceptance of the State of lands certified to it by the Secretary of the Interior, as included in the Railroad Grant of 1856, is conclusive upon the State and upon persons deriving

their rights from it, against a claim to the lands under the Swamp Land Act of 1850, where no patent has been issued or identification of these lands made by the Secretary of the Interior under the latter act. *Ib.*

9. The Swamp Land Act of 1850 gave an inchoate title to the State, but the identification of the lands by the Secretary of the Interior was necessary before the title became perfect or the State was entitled to a patent which vested the fee simple title. *Ib.*

10. Shallow Lakes were never construed to be swamp lands by the Land Department of the Government, and were excluded from the patents. Resolution No. 27 by the State of Louisiana, March 5th, 1853.

11. The sale or disposition of land, the property of another, is a nullity; ownership is essential in the vendor to confer title. The sale by the State of a shallow lake, without authority of law, or without title, was a nullity. It was, therefore, competent for the State to tender back the price paid; and, on refusal by the pretended purchaser, to return the certificate of entry and to sue for the nullity of the entry of the land.

12. A judgment at the suit of the State, annulling the entry and patent issued in error, is conclusive.

13. The administrator of a succession which, though apparently solvent, owes debts and is unsettled, and which the heirs, though present, have never accepted, may bring a real action for the recovery of property claimed to belong to the succession and held by adverse title not derived from the decedent in his own name, and without joining the

heirs, and *vice versa*. Woodward, A. D., vs. Thomas, 38 An. 238.

14. A judgment of a court cannot be questioned collaterally, unless the nullity is absolute. 10 Wall. 308; 6 La. 635; 40 An. 659; 111 U. S. 578; 119 U. S. 642; 20 Wall. 350; A. & E. Encyc., Vol. 12, 147; 138 U. S. 439; Simmons vs. Saul, 138 U. S. 153.

15. The judgment of the Federal Court, in the case of Smith vs. Turner, decreeing the plaintiff to be entitled to the lands sued for, to-wit: 35 and 18-100 acres, is not *res adjudicata* as to the claim of the plaintiff in this case for the balance of the "Silver Lake" property. The plaintiff in that case objected to testimony as to the value of the whole tract on the specific ground that only that particular part of 35 and 18-100 acres was affected by the litigation; said contention being sustained by the Court, and it being distinctly stated by the Court that nothing was at issue except the question of ownership of the 35 and 18-100 acres, and the testimony of the value of the whole tract being refused for this reason. On appeal, the Supreme Court of the United States, the plaintiff Smith having moved to dismiss the writ of error, concluded by saying: "It is therefore submitted that no question is raised in this regard, except as to property worth about $2000.00, and therefore the writ of error should be dismissed." And the Supreme Court, having thus concurred in the view entertained by the counsel of Smith and in the ruling of the Circuit Judge, dismissed the writ of error, holding that no property was at issue or *could be affected* by the judgment in the case, except that particular tract of 35 and 18-100 acres sued for and claimed by the plaintiff to be in the pos-

session of George A. Turner. Evidently such judgment is not *res adjudicata* against plaintiff's claim for the balance of the "Silver Lake" property.

The defendants in this case, the plaintiffs in that, are estopped by their pleading and contention, both in the lower court and the Supreme Court of the United States, by their objection to testimony to prove the value of the whole tract and their plea to the jurisdiction on the grounds set up and maintained by them in both courts. Railroad vs. R. N. Smith et als., 135 U. S. 195.

On the 5th day of May, 1896, the Vicksburg, Shreveport & Pacific Railway Company brought this action against Albert Tibbs and a large number of other trespassers and occupants of the tract of land in the City of Shreveport, described as lots 1 to 9, inclusive, of Section Thirty-One (31), Township Eighteen (18), Range Thirteen (13) West, being One Hundred and Seventy-Eight and 80-100 (178.80) acres, less Thirty-Five and 18-100 (35.18) acres, which was the subject of the action in the case of R. N. Smith et al. vs. George A. Turner et als., leaving One Hundred and Forty-Three and 62-100 (143.62) acres of the tract as the subject matter of this contest. Its value is alleged in the petition to be more than Ten Thousand ($10,000.00) Dollars and the annual use thereof at One Thousand ($1000.00) Dollars per annum.

In December, 1898, the defendants filed an appear-

ance, disclaiming ownership and setting up that they were put in possession of the property by A. H. Leonard, G. R. Wilson, and the Heirs of W. W. Smith. Leonard, Wilson, and the Heirs of Smith, filed an exception, setting up the judgment in the case of R. N. Smith et al. vs. George A. Turner et al., in Judge Boarman's Court, as *res adjudicata*, in bar of plaintiff's demands. The then District Judge, having had some personal interest in the controversy, recused himself, and Judge Watkins of the Second District was called to try the issue. Delays incident to this condition of things prevented the trial of the exception for some time, but the same when tried was overruled. Whereupon, an answer was filed in which the substituted defendants reiterated for their principal defense their former plea of *res adjudicata*, and claiming to be owners of the property by virtue of a purchase by their ancestor and vendor, W. W. Smith, from the State of Louisiana on the 14th of May, 1853, as a shallow lake which they claimed the State had acquired from the Federal Government under the Swamp Land Acts of 1849 and 1850.

After these proceedings, the defendant was forced in the Federal Court into the hands of a Receiver, and J. H. McCormick, as such Receiver, was substituted as plaintiff. The lands of the original plaintiff, under the direction of the Federal Court, were sold at public

sale, and Mr. C. C. Harvey was the adjudicatee at said sale, and the sale being confirmed, Mr. C. C. Harvey has become the substituted plaintiff in this case.

As plaintiffs in this, a petitory action, we must, as a matter of course, show our title. The original grantee, the V. S. & T. R. R. Co., was organized in 1853, by the Legislature of Louisiana, having for its purpose the construction of a railroad from a point opposite Vicksburg, through Monroe and Shreveport, to the Texas State Line; and on the 3rd of June, 1856, pursuant to the policy, the Federal Government, then adopting for the development of its territory what was known as the Land Grant Act was passed. That Act granted to the State of Louisiana, for the purpose of aiding in the construction of a railroad from the Texas State Line west of the town of Greenwood, via Greenwood, Shreveport and Monroe to a point on the Mississippi River opposite Vicksburg, every alternate section of land designated by odd numbers for six (6) sections in width on either side of said Road, etc. The Third Section of that Act provided, that "the said lands hereby granted to said State shall be subject to the disposal of the Legislature for the purpose aforesaid and no other, and the Railroad shall be and remain a public highway for the use of the Government, etc."

Here permit us to remark that this was clearly an appointment by the United States of a Trustee for a

specific purpose—the performance of a naked, plain duty, restricted, as in the language of the Act, "for the purpose aforesaid and no other." The Trustee took the lands for the purpose for which they were granted, and for no other purpose.

Immediately following this Act of 1856, the line of the road was established, and by Act 98 of 1857 the State accepted the trust conferred by the Government in the above Act of Congress, using the following language: "And the same are all and severally hereby and upon the same terms, disposed of, granted to and conferred upon the Vicksburg, Shreveport and Texas Railroad, a body corporate, existing under the laws of the State of Louisiana."

On the 19th of March, 1857, the Legislature authorized the Railroad to mortgage the lands. In the September following, the original mortgage was executed. In the meantime, pursuant to the provisions of the Act of Congress of the 3rd of June, 1856, and the Act of the Legislature of March 7th, 1857, early after the acceptance of the trust, appointed agents to select the indemnity lands, and make maps and lists of all the lands; the same was submitted to the Commissioner of the General Land Office and the Secretary of the Interior; the whole being duly filed in the office of the Secretary of the Interior, were withdrawn from sale, settlement or

entry. These lists of lands were then certified to the State for the use of the grantee by the Commissioner of the General Land Office and the Secretary of the Interior, and convey as complete titles as patents; and lands embraced in said lists and certificates are not thereafter open to settlement or entry. Legal title passes as completely by certification as if patent issued.

Rev. Stat. U. S., Sec. 2449.

Garriques vs. A. T. & S. F. R. R., 6 Land Dec., p. 543.

Frazier vs. O'Conner, 115 U. S. 102.

Mower vs. Fletcher, 116 U. S. 381.

Therefore, in so far as the Government or grantor was concerned, it was divested of title, and the title through the trustee invested in the real grantee, the V. S. & T. R. R. Co.

We will not rehearse the history of these lands in this connection, in so far as our title is concerned, any further than is necessary, it being understood that defendants do not controvert our chain of title. Let it be sufficient to say, that the mortgage on the lands authorized by the State and executed in September, 1857, after the war was closed, under authority of the Federal Court, and the V. S. & P. R. R. Co., the original plaintiff in this case, became the owner and purchaser of all the rights of the original grantee, and was the actual owner of the property in question when

the receivership of J. H. McCormick was established by the Federal Court after the filing of this suit. All the proceedings showing our title are contained in the record. We assume that the Court, as did the counsel in the lower court, admitted our chain of title, and will judicially recognize the fact that the chain of title under which the plaintiff in this case claims, has time and again undergone examination by your Honorable Court, and there can no longer be any question as to the ownership of the original plaintiff of the lands, the subject of the grant of 3rd of June, 1856. The cases to which we refer are: Railroad vs. Sledge, 41 An. 896; Mower vs. Kemp, 42 An. 1007; State vs. Railroad Co., 44 An. 981; and Railroad Co. vs. Elmore et als., 46 An. 1242.

In State vs. Railroad Co., 44 An. 1002, we find the following:

"We have been called on, on two occasions, to examine into the rights of the present defendant in and to the lands embraced in the Act of June 3rd, 1856, once in the case of the V. S. & P. R. R. Co. vs. Sledge, 41 An. 896, and once in that of Kemp vs. Mower, 42 An. 1007, and whilst by reason of a difference of parties in the present case and those cited the decisions rendered therein do not fall technically under the plea of *res judicata*, they none the less substantially dispose of the issues raised in this."

It will be observed, then, that our title is direct from the original owner of the property. The Federal Government owned the land and the patent or certificate, upon which we rely, is from the original owner.

The defendants claim to have purchased the land in question as a shallow lake from the State; then arises the important question, where did the State derive its title? assuming that the Federal Government was the original owner. Our contention is, and that of the State has been for nearly fifty years, that they were mistaken, that the State had no title to convey to them, that the sale under which they claimed was a nullity, and that they were selling property that did not belong to the State, and such has been the action of the Federal Government ever since. The facts are simply these: the Act under which Smith claimed to enter the lands as "Shallow Lake," on the 14th of May, 1853, was not promulgated until the 23rd day of June, thereafter, and it is evident that the Act was the product of some enterprising individual, and the extraordinary expedition of the sale clearly indicates undue enterprise.

THE SALE TO SMITH BY THE STATE AN ABSOLUTE NULLITY.

Smith claimed under the Act of 30th of April, 1853, authorizing the Register of the Land Office to sell certain shallow lakes in the State of Louisiana. The Act

was not promulgated until the 23rd of June, 1853, and therefore was not in effect, if ever, when Smith claimed to have entered the lake on the 4th of May, 1853. The Federal Government was the original owner of the property; there is no legislation or acts whatever upon the part of the Federal Goverument in existence, nor has there ever been any grant or transfer of the Shallow Lakes in Louisiana to the State. Upon the contrary, the universal construction of the Swamp Land Act of 2nd of March, 1849, and Sept. 17th, 1850, by the United States Land Office and the Department of the Interior, Shallow Lakes were not included under said grant, nor were they ever listed to or patented to the State or considered Swamp Lands under the terms of those Acts. On the 5th of March, 1853, however, the following resolution was adopted by the Legislature of Louisiana:

"RESOLUTION.

"Requesting our Senators and Representatives in Congress to procure the passage of an Act authorizing the Secretary of the Interior to cause to be selected certain Shallow Lakes in this State, as a part of the lands donated by Congress.

"WHEREAS, a large portion of Louisiana has been covered with lakes, which, in many instances, have been, or may be drained, while others cover a large extent of country during the season of high water only;

and, whereas, the Commissioner of the General Land Office at Washington City has given instructions to the Surveyor General that these lakes are not considered land; and, whereas, under these instructions, the Surveyor General cannot select them as enuring to the State under the Acts of Congress of second of March, one thousand eight hundred and forty-nine, and seventeenth of September, one thousand eight hundred and fifty. Therefore,

"Be it resolved, by the Senate and House of Representatives of the State of Louisiana, in General Assembly convened, That the Secretary of the Interior be requested to order a selection of such shallow lakes in the State of Louisiana as cannot be made navigable, or if navigable, then the portions thereof to the low water line; and if, upon examination, he shall determine that he has no such power:

"Resolved, That our Senators and Representatives in Congress be requested to procure the passage of a law granting such necessary power to the Secretary of the Interior."

At the same session of the Legislature, the Act No. 284, authorizing the Register of the Land Office to sell certain shallow lakes in the State of Louisiana, was passed, as above stated. One of the provisions of said Act reads as follows:

"Provided said sale shall not be made until the lands have become the property of the State."

We have searched in vain the records to find any affirmative response to the resolution above quoted by the Legislative and Executive authority of the Government. However, we do find that the Supreme Court of the United States, in French vs. Fyan, 93 U. S. 169, decided:

"That, by the Second Section of the Swamp Land Act, the power and duty involved on the Secretary of the Interior, as the head of the Department, which administered the affairs of the Public Land, of determining what lands were of the description granted by that Act, and made his office the tribunal whose decision on that subject was to be controlling."

Quoting the above in Rogers Locomotive Works et als. vs. The American Immigrant Co., 164 U. S. 571, the Court says:

"The identification of lands as lands embraced by the Swamp Land Act was therefore necessary before the State could claim a patent or exercise control of them." *

There is no proposition better settled than that the Secretary of the Interior was vested with judicial power under the Swamp Land Act in determining the character of lands embraced therein.

Under the Act of 3d of June, 1856, the lands, the

* Frundon vs. Mercaef 10 Mis. Sol
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subject of the donation to the V. S. & T. R. R. Co., were duly selected and listed as required, and the identical property now in dispute was certified by the Commissioner of the General Land Office and approved by Secretary of the Interior Thompson, October 3d, 1859; the Federal Government thus patenting the lands to the Company. The United States Land Office at Washington, in passing upon the title to the identical tract of land involved in this suit, decided that it belonged to the V. S. & T. R. R. Co. In the case of J. W. Carlin vs. the V. S. & P. R. R. Co., the Commissioner of the General Land Office decided, March 28th, 1872, that these lands fell within the Railroad grant, and in approving said decision, Secretary of the Interior Delano used the following language:

"In view of the foregoing facts, I am of the opinion that the land in controversy constitutes part of said section thirty-one, that they were withdrawn from the market 31st of May, 1856, and were duly certified and approved to the State of Louisiana for the benefit of the said V. S. & P. R. R., under Act of Congress approved June 3rd, 1856.

"Having been thus withdrawn and certified, these lots are not subject to the rights of homestead entry. I think, therefore, the Government is committed to this view."

In March, 1881, in cases of J. A. King and Ambro

and Martelle vs. the V. S. & P. R. R. Co., all of this being found on page 98 of the record, Secretary Kirkwood used the following language in passing upon the title of the plaintiff to the property in question:

"In disposing of the case as thus presented, it is only necessary to say, that the subject matter involved was decided against the appeal of a former claimant upon these identical lands by my predecessor, Secretary Delano, March 20th, 1872, who held the lands were originally part of Section 31, and were properly certified to the State in 1859, for the benefit of the road.

"The foregoing decisions touching the lands in question had the force and effect of *stare decisis*, the approval of the list containing the particular lands as part of the grant earned by the Company must be considered as a final adjustment and disposition of the subject as far as the jurisdiction and power of the Department extended."

Thus it will be seen that the judicial power of the Land Department of the United States has time and again passed upon the character of these lands, and uniformly have held, from 1859 to the present time, that the lands were included in the Act of 3rd of June, 1856, and necessarily excluded from the provisions of the Swamp Land Act. In other words, a shallow lake, under the construction of the Department, was never

Swamp Land and never has been so treated: and notwithstanding the resolution of the Legislature of Louisiana passed in 1853, requesting a change of the Department's views upon the subject.

THE STATE ANNULS THE ENTRY BY SMITH.

On the 3rd of December, 1857, the State of Louisiana, being then satisfied that the sale to Smith was erroneous under the Act of 1853, after tendering to Smith the price he had paid the State for the land, brought suit against W. W. Smith in the District Court of Caddo Parish to procure the cancellation of the patent and to have the sale of the land to Smith decreed a nullity. The petition in that case sets forth that the Register of the Land Office permitted the entry and issued the patent to W. W. Smith to "Silver Lake," 186.57 acres, and "Cross Lake," containing 21.15 acres, in error. First, because the law under which said entries were made had not been promulgated at the date when said entries were made; second, because said lakes had not, at the time of said entries, been legally surveyed, nor had the surveys been recognized by the State, nor have they yet been; third, because the patent to "Silver Lake" was issued by L. J. Segur, Register, in error of the fact that the law was not promulgated at the time of the entries, and also in error of the other fact that the entry had

been cancelled before the law had been promulgated.

The answer to these allegations was filed by J. W. Smith, Administrator of the Succession of W. W. Smith, and was a general denial and a claim that W. W. Smith had acquired all of the rights that the State of Louisiana had. On the trial, it was shown by W. H. Crenshaw as a witness, who was Register of the State Land Office when Smith bought the land, that the land sold to Smith was never Swamp Land nor sold as such B. Harrolson, who was Register at the time in 1857, testified that in the Warrant Book, opposite Smith's entry of "Silver" and "Cross Lake," the following words appeared in the handwriting of W. H. Crenshaw, Register, to-wit: "This sale is cancelled, because sold in error, the law not having been promulgated. Signed June 5th, 1853, William H. Crenshaw, Register."

The evidence of Mr. Crenshaw shows that the notice of cancellation was served on Smith; it also shows a legal tender of the money which he had paid for the land anterior to the bringing of the suit. There was judgment for plaintiff Nov. 21st, 1860, after trial and verdict by jury, cancelling the entry and the patent. Orders of appeal were granted J. W. Smith, Administrator, returnable to the Supreme Court at Monroe for the second Monday in July, 1861. The war being in progress and continuing for some years, the Court met

in this District for the first time in August, 1866. Except to continue the case until 1869, no action was taken therein, when the minutes show that by consent of counsel, the Supreme Court, on August 11th, 1869, dismissed the appeal. This left the judgment in the District Court by Judge W. B. Egan cancelling the entry and title in full force, with the entry cancelled and the patent thereunder annulled. Thus, the State had done all in its power to correct the error permitting the entry by W. W. Smith, in 1853, and thus acquiescing in the construction by the Land Department of the Government, that under the terms of the law, the land was shallow lake and not swamp land, and the necessary effect thereof was that it was covered by the grant to the original plaintiff on the 3rd of June, 1856.

Thus, it appears that whatever rights Smith received in virtue of his attempted entry, in 1853, the same had been annulled and the whole proceedings and his rights thereunder cancelled.

Whilst it is true that plaintiff, in a petitory action, must recover on the strength of his own title and not on the weakness of that of his adversary, yet it is entirely proper to show that the adverse party in possession is really without title and a trespasser in fact, and plaintiff, in a petitory action, is not required to

show as good and strong a title against a trespasser as against a person who has title. The contention of defendant in this case was urged in a case entirely similar, growing out of the same entry, Smith being one of the parties thereto, and was disposed of adversely to defendants' contention.

Defendants, however, in this case, urge that the judgment rendered by the District Court, in the case of the State vs. W. W. Smith, in 1860, is a nullity, because it was not proper to wage a contest in which realty was involved, against an administrator, and that the laws of Louisiana require that the heirs of Smith should be made parties. Again, they allege that the Supreme Court of Louisiana had no right to dismiss the appeal as the curator and administrator had been discharged in 1867.

In December, 1894, the defendants in this case brought suit against the Texas and Pacific Railway Co., in the Federal Court, for a portion of land in the City of Shreveport, acquired by their ancestor and author at the same time and in the same manner, and with like conditions as that now in contest between the parties hereto. Judge Boarman rendered judgment for the plaintiffs, the present defendants. The effect of the judgment in the case of the State vs. Smith, for the annullment of his entry, was the principal issue involved in said case. On appeal to the Supreme

Court of the United States, Judge Boarman's action was reversed and the case remanded for retrial. 159 U. S. 67. On a second trial, a similar judgment was rendered in the Federal Court, and on appeal to the Circuit Court of Appeals, which, in the meantime, had been established, the United States Court of Appeals reversed the judgment of the lower court, and the same will be found reported in 91 Fed. Rep. 483, and 33 C. C. A. 648. The Supreme Court of Louisiana was sitting, in 1866, as a Court of General Appellate Jurisdiction, Smith, the Administrator (for it will be noted that the heirs were all non-residents at that time), who might be treated as the curator of a vacant succession, appeared and filed an answer, when same was continued; and in 1869, the appeal was dismissed on motion of both parties.

It is elementary that the action of the Court in such a matter cannot be attacked collaterally. If, in its judgment of dismissal, in 1869, the Supreme Court of Louisiana made a mistake, the heirs of W. W. Smith, during the last forty years, might have applied to that Court for relief, but any other Court has no right to ignore this action. On this point, a great many authorities will be found. In the case of Cooper vs. Reynolds, 10 Wall. 308–16; In Dupree vs. Reggio, 6th La. 635, it was held that the correctness of the judgment of a Court of Probate could not be ques-

tioned in the District Court. In Ludeling vs. Chaffe, 40 An. 649, it was held that the judgment cannot be questioned collaterally unless its nullity is absolute. In Colt vs. Colt, 111 U. S. 578, it was held that the decree of the Supreme Court of Connecticut could not be attacked collaterally on the ground that the minor was not properly represented before the State Court. In Barrell against Tilton, 119 U. S. page 642, a decree of a State, declaring the right of a maried woman to mortgage her property, was not held to be liable to collateral attack in the Federal Court. In Cornell vs. William, 20 Wall. 250, the same rule was laid down in the proceedings in a County Court of Texas. It is even been held in many cases that a judgment cannot be impeached collaterally on the ground that the defendant was dead at the time the writ issued or the judgment was rendered. A list of such cases can be found in the A. and E. Ency. of Law, 12 Vol., 147. The case of Simmons vs. Saul, 138 U. S. 439, is very much in point, as to the effect of the action of the Supreme Court, and is strong authority that the action of the Supreme Court, in the case of the State of Louisiana vs. Smith, it was there held, even as to the action of the Probate Court in Louisiana, when jurisdiction once attached, no informalities as to notices, advertisements, etc., in the subsequent proceedings, could be held to oust that jurisdiction.

Perhaps, if the Supreme Court had had attention called to the fact that Smith, the Administrator, had been discharged in 1867, it might have directed some notice to be given under its rules, as in the case of death of a party. If it ought to have done so, the failure to do so could only have been an error, and could not have ousted the jurisdiction which existed by the administrator taking appeal, and the State coming in and answering in 1886.

The language of Justice Lamar, in Simmons vs. Saul, 138 U. S. at foot of page 153, is very instructive. "There is another important principle. It has often been decided that as the Superior Courts, of which the Supreme Court of Louisiana is one, when the jurisdiction had been upon the facts not apparent on the record, such facts will be presumed in a collateral proceeding, and that presumption cannot be rebutted by evidence *dehors* the record." A large number of decisions to this effect can be found in the Ency., page 147.

So, in that case, it was definitely determined that the judgment of the Court cannot be collaterally attacked and, therefore, that the decree dismissing the appeal in State of Louisiana vs. Smith, in 1869, was a valid judgment, to which full effect must be given. And the case was reversed a second time, and the T. & P., the defendants, decreed to be the owner of the

property. There are special features of this case that make it exceedingly interesting in this controversy, because of the indentity of facts and the action had thereon, and this puts at rest, absolutely, the contention that the judgment of the District Court, by Judge Egan, in the case of the State vs. W. W. Smith, for the cancellation of his entry of the land in question, and his patent, therefore, was null and gives full effect to said judgment. This being the case, then, if Smith ever had any title to the land in question, it was absolutely destroyed and annulled at the suit of the author of his title, after issue joined by a court of competent jurisdiction, and was therefore *res adjudicata*, and put an effectual estoppel against Smith and all who claim under him in virtue of the entry thus cancelled. Then are we not justified in saying that the defendants in this case are absolutely without title?

Now, then, we revert to our title again.

The certificate of the Secretary of the Interior, that certain lands enured to the State, under the Railroad Act of 1856, was a decision that they were not embraced by the Swamp Land Act of 1850. In our case, it appears that the original certificate to that effect, of Secretary Jacob Thompson, has been time and again, by the various Secretaries of the Interior, approved and confirmed, and has become absolutely the rule of action of the Government.

The acceptance by the State of lands certified to it by the Secretary of the Interior, as included in the Railroad Grant of 1856, is conclusive upon the State against a claim to lands under the Swamp Land Act of 1850; while no patent has been issued or identification of these lands made by the Secretary of the Interior under the latter act. Rogers' Locomotive Machine Works et al. vs. American Immigrant Company, 164 U. S. 559-577. This case, decided in 1896, reviews all the previous decisions upon this question, and settles effectually the law on the subject involved. It is so entirely applicable, we ask the indulgence of the Court for making copious extracts therefrom, as, indeed, it is conclusive of the issues in this case.

Mr. Justice Harlan delivered the opinion of the Court and said:

"The present suit was brought by the American Emigrant Company for the purpose of obtaining a decree quieting its title to certain lands in Calhoun County, Iowa. The plaintiff asserts title under the Act of Congress known as the Swamp Land Act of 1850 (9th Stat. at L. 519, Chap. 84); the defendants, under the Act of Congress of May 15th, 1856 (11th Stat. at L. 9, Chap. 28), granting land to Iowa in aid of the construction of various railroads in that State, among others, a railroad from Dubuque to Sioux City with a

branch from the mouth of the Tete Des Morts to the nearest point on the road.

"The principal contention of the plaintiff is that the lands passed to the State under the Act of 1850, and were not embraced by the Railroad Act of 1856.

"A decree was passed adjudging the plaintiff to be the owner of some of the tracts described in its petition. As to the other tracts, the suit was dismissed. Upon appeal by the defendants to the Supreme Court of Iowa, the decree was affirmed. 83 Iowa, 612. The present writ of error brings that decree before us for examination.

"By the above Act of September 28th, 1850, all swamp and overflowed lands made unfit thereby for cultivation, were granted to the respective States in which they were situated, that they might be reclaimed by the construction of the necessary levees and drains. By the second section of that act it was made the duty of the Secretary of the Interior, as soon as practicable after the passage of the act, to make out an accurate list and plats of such lands, and transmit the same to the governor of the State, and at the request of the latter, 'cause a patent to be issued to the State therefor, and on that patent, the fee simple to said lands shall vest in the said State.'

"The Legislature of Iowa, by an act passed February 5th, 1851, authorized the Commissioner of the State

Land Office to take such steps necessary to secure to the State the lands granted by the above act. To that end, the Commissioner, having reason to believe there were many tracts of swamp land within the State not reported as such by the United States Surveyor, sufficient *to justify* a more particular examination, was to direct the county surveyor of any county in which the lands were located 'to make the examination and provide the proofs necessary to secure such lands to the State, a list of which shall be returned to the Land Commissioner or the authority acting in that capacity, verified by affidavit,' etc. Iowa Laws, 1850-51, Chap. 69, p. 169.

"By a subsequent Statute of Iowa, passed January 13th, 1853, the swamp and overflowed lands granted to the State by the Act of 1850, were granted 'to the counties respectively in which the same may lie, or be situated, for the purpose of constructing the necessary levees and drains to reclaim the same; and the balance of said lands, if any there be, after the same are reclaimed as aforesaid, shall be applied to the building of roads and bridges, when necessary, through or across said lands, and if not needed for this purpose, to be expended in building roads and bridges within the county.' The same act provided that whenever 'it shall appear that any of the lands granted to the State by the aforesaid Act of Congress, shall have been sold

by the United States since the passage of that act, it shall be lawful for the said counties to convey said lands to the purchasers thereof.' It also provided that in all the counties where the county surveyor had made no examination and report of the swamp lands within his county, in compliance with the instructions from the governor, the county court should appoint some competent person, who should proceed 'to examine said lands and make due report and plats, upon which the topography of the country shall be carefully noted, and the places where drains or levees ought to be made marked on the said plats, to the county courts respectively, which courts shall transmit to the proper officers lists of all said swamp lands in each of the counties, in order to procure the proper recognition of the same on the part of the United States, which lists, after an acknowledgment of the same by the general government, shall be recorded in a well bound book provided for that purpose, and filed among the records of the county court.' Iowa Laws, 1852, Chap. 12, p. 29.

"By another Act, also passed January 25th, 1855, amendatory of the Act of January 13th, 1853, it was provided: 'Sec. 1. That no swamp or overflowed lands granted to the State, and situate in the present unorganized counties, shall be sold or disposed of till the title to said lands shall be perfected in the State,

whereupon the title to said lands shall be transferred to the said counties where they are situated.'

"It appears that, in 1856, the county court of Calhoun county appointed Charles Amy to select and survey the swamp lands in that county, in accordance with the provisions of the above act of January 13th, 1853."

"This was after the passage by Congress of the Railroad Act of May 15th, 1856, granting lands to the State of Iowa to aid in the construction of certain railroads in that State. 11 Stat. at L., Chap 28. By that act, there was granted to Iowa, to aid in the construction of the railroads, among them a railroad from Dubuque to Sioux City, with a branch, every alternate section of land, designated by odd numbers, for six sections in width on each side of the respective roads named by Congress. If it appeared at the time the route of a road definitely fixed, that the United States had sold any of the sections or parts of sections granted, or that the right of preemption had attached to the same, then the State, 'subject to the approval of the Secretary of the Interior,' was entitled to select other lands nearest to the sections granted to supply the deficiency. But it was declared, 'that any and all lands heretofore reserved to the United States by any act of Congress, or any other manner by competent authority, for the purpose of aiding in any object of in-

ternal improvement, or for any other purpose whatsoever, be, and the same are hereby reserved to the United States from the operation of this act, except so far as it may be found necessary to locate the routes of said railroads through such reserved lands, in which case the right of way only shall be granted, subject to the approval of the President of the United States."

"The above Act of May 15th, 1856, with its provisions and restrictions, was accepted by the State by an act approved July 14th, 1856, and the lands, interests, rights, powers and privileges granted by Congress, so far as they related to the proposed road from Dubuque to Sioux City, were granted and transferred to the Dubuque and Pacific Railroad Company, to aid in the construction of its railroad and branch, subject to the conditions and incumbrances prescribed by Congress. These lands were transferred to the railroad company upon the express condition that, if it did complete and equip a given number of miles of its road within a named time, and its entire line on or before such certain date, then the State might resume all rights to the lands so granted and remaining undisposed of by the company. Iowa Revision, 1860, Chap. 55, p. 215, Art. 2.

"By a Supplementary Act passed January 28th, 1857, the companies obtaining the benefits of the Act of Congress of 1856, and of the Act of the Iowa Legisla-

ture of July 14th, 1856, were authorized to make such disposition, by mortgage or deed of trust, of the lands granted by the Act of 1855, as might be deemed proper to secure construction bonds necessary for the completion of their roads, such mortgage or deed of trust to be a binding and valid lien upon all the property mentioned therein, including rolling stock, and the purchasers, under a trustee's sale of foreclosure of mortgage, to have and enjoy all the rights of a purchaser on execution sale. Iowa Revision, 1860, Chap. 55, p. 222, Art. 5.

"It was stipulated by the parties that the lands in controversy 'are within the limits of the railroad grant of May 15th, 1856, to aid in building a railroad from Dubuque to Sioux City, and were earned by the building of said road if they were subject to said grant; and that the various defendants hold, by apt and sufficient conveyance, all the title and interest in said lands which passed under and by said grant, if any title or interest did pass thereunder or thereby.' This, of course, implies that the railroad company performed all the conditions prescribed in reference to these lands, either by the Act of Congress of May 15th, 1856, or by the Acts of the Iowa Legislature.

"It appears in evidence that the lands in controversy and other lands were certified to the State by the General Land Office of the United States, under date

of December 25th, 1858, as lands within the six mile or place limits defined by the Act of Congress of May 15th, 1856, 'being the vacant and unappropriated lands in the alternate sections designated by odd numbers, for six sections in width on each side of the Dubuque and Pacific Railroad and branch within the State of Iowa.' The lists of those tracts were first submitted by the Commissioner of the General Land Office, 'for the approval of the Secretary of the Interior, in accordance with the requirements of the said Act of May 15th, 1856, subject to all of its conditions and to any valid interfering rights which may exist to any of the tracts embraced in the foregoing list.' The certificate of December 25th, 1858, was indorsed by the Secretary of the Interior: 'Approved subject to the conditions and rights above mentioned.'

"It was further stipulated in this case, that 'all the lands in controversy were selected by duly appointed and authorized agents of Calhoun County, as swamp lands, under the Act of Congress of September 28th, 1850, and reported the same to the County Court of Calhoun County September 30th, 1858.'

"On the 27th of March, 1860, the Surveyor General of the State of Iowa certified that the lists of lands that had been selected by the county surveyor or State locating agents as swamp lands had been carefully compared with field notes, plates and other evi-

dence on file in his office, and, 'by the affidavits of said county surveyors or State locating agents, it appears that the greater part of each smallest legal subdivision of the lands embraced in said list is swampy or subject to such overflow as to render the same unfit for cultivation, and is therefore of the character contemplated by the Act of the 28th of September, 1850.' The list was endorsed by the General Land Office: 'Received with the Surveyor General's letter of March 27th, 1860.'

"The list of the lands selected in the manner above stated by the agents of Calhoun County, together with a letter from the Commissioner of the General Land Office, dated February 12th, 1874, was received at the local land office at Des Moines, Iowa, on the 18th day of February, 1874.

"It does not appear that the Secretary of the Interior ever took any action in respect to the lists made by the agents of Calhoun County of lands selected by him as swamp lands, nor that the State or the county, nor anyone claiming under the county, ever directly sought any action by the General Land Office or by the Secretary of the Interior in respect of such selections.

"It should be here stated, that on the 12th day of December, 1861, a written contract was made between the County of Calhoun, Iowa, and American Emigrant

Company, in relation to the swamp and overflowed lands in the county. Subsequently, in 1863, the county conveyed to the company, subject to the provisions of the Swamp Land Act of 1850, the lands in controversy and other lands, upon certain conditions which it is unnecessary to set forth. In the light of these facts, and of the Federal and State Legislatures relating to the matters in controversy, we proceed to the consideration of the questions presented for our determination.

"As the Railroad Act of 1856 excepted from its operation all lands theretofore reserved to the United States by any Act of Congress, or any other manner by competent authority, for any purpose whatever, the certification to the State by the Department of the Interior of the lands in controversy as having inured under the railroad act of May 15th, 1856, to the State for the benefit of the Dubuque and Pacific Railroad Company, was unauthorized, if, at the date of the Swamp Land Act of 1850, the lands were swamp and overflowed lands, whereby they were unfit for cultivation; for lands of that character were expressly reserved from the operation of the railroad grant of 1856. If they were not granted to the State for the benefit of the railroad company, because previously granted to the State as swamp and overflowed lands, they could properly

have been certified or transferred to the State, to be applied in aid of the construction of the railroad. McCormick vs. Hayes, 159 U. S. 332, 338.

"But it is equally true, that the Act of 1850 made it the duty of the Secretary of the Interior, as soon as practicable after the passage of the act, to make out an accurate list and plats of the swamp and overflowed lands granted to any State and transmit them to the Executive of the State, 'and, at the request of said Governor, cause a patent to be issued to the State therefor; and *on that patent* the fee simple to said lands shall vest in said State,' subject to the disposal of its legislature. While, therefore, as held in many cases, the Act of 1850 was *in praesenti*, and gave an inchoate title, the lands needed to be identified as lands that passed under the act, which, being done, and not before, the title became perfect as of the date of the granting act. Wright vs. Roseberry, 121 U. S. 488, 494 (30; 1039, 1040) *et seq.;* Tubbs vs. Wilhoit, 138 U. S. 134, 137 (34; 887, 888); Chandler vs. Calumet and H. Min. Co., 149 U. S. 79, 91 (37; 657, 661). So, in Ehrhart vs. Hogaboom, 115 U. S. 67, 68 (29; 346). In French vs. Fyan, 93 U. S. 169 (23; 812), this Court decided, that by the 2nd Section of the Swamp Land Act, the power and the duty devolved upon the Secretary of the Interior, as the head of the department which administered the affairs of the

public lands, of determining what lands were of the description granted by that act, and made his office the tribunal whose decision on that subject was to be controlling. The identification of lands, as lands embraced by the Swamp Land Act, was therefore necessary before the State could claim a patent or exercise complete control of them.

"In McCormick vs. Hayes, above cited, it appears that the Secretary of the Interior, proceeding under the railroad act of May 15th, 1856, had certified certain lands as inuring to Iowa under that act. It was insisted in that case that the lands were covered by the Act of 1850, and, therefore, that they were improperly certified under the Railroad Act of 1856; a fact which, it was contended, could be established by parole evidence, so as to fix the title in certain parties, independently of any action that may have been taken by the Interior Department upon the subject. The precise nature of the case is shown by the extract from the opinion of the Court: 'The controlling question, therefore, in this case, so far as the plaintiff is concerned—and he must recover upon the strength of his own title, even if that of the defendant be defective—is whether, under the circumstances disclosed by the record, the particular lands in controversy, in the absence of any selection and certification of them by the United States to the State, under the Swamp Land

Act, can be shown by parole testimony to have been, in fact, at the date of the act, swamp and overflowed lands. Congress having made it the duty of the Secretary of the Interior to make out accurate lists and plats of the lands embraced by the Swamp Land Act, and transmit the same to the Governor of the State, and at the request of the latter to cause a patent to be issued to the State therefor, and having provided that, on that patent, the fee simple to said lands shall vest in said State subject to the disposal of the Legislature thereof,' did the title vest in the State, by virtue alone, and immediately upon the passage of the act, without any selection by or under the direction of the Department of the Interior, so that the State's grantees could maintain an action to recover the possession of them."

"In determining that question, this Court, after an extended review of former decisions, thus stated (McCormick vs. Hayes, 159 U. S. 346, 347); (40; 175, 176) its conclusions: 'The case before us is not like that of Hannibal and St. J. R. Co. vs. Smith, 79 U. S.; 9 Wall. 95 (19; 599), in which, as subsequently explained in French vs. Fyan, 93 U. S. 169 (23; 812), it was shown that there was an absolute neglect of duty on the part of the Interior Department, in that it neither made nor would make any selection or lists whatever, and therefore there was no action by that

department that could be relied on as a determination of the question whether the particular lands then in dispute were or were not embraced by the Swamp Land Act. That case was exceptional in its circumstances, and seemed to justify the decision rendered, in order to prevent a total failure of justice, arising from the unexplained neglect of the Land Department to perform the duty imposed by the Act of 1850. What was said in French vs. Fyan shows that this Court not only so regarded the previous case, but it was in effect said that the ruling in Hannibal and St. J. R. Co. vs. Smith was not to be extended to any case in which the Land Department had taken action, or made a decision or determination under the swamp land act.' Again, and in reference to the certification of the lands under the Railroad Act of 1856: 'Twice the Land Department certified these lands to the State as inuring to it under the railroad land grant act, and it does not appear that the State has ever questioned the correctness of the certification or applied to the Secretary of the Interior for a re-examination as to the character of the lands.'

* * *

"One of the prior adjudications referred to in McCormick vs. Hayes, was Chandler vs. Calumet, and H. Min Co., 149 U. S. 79, 88, 89, 92 (37; 657, 661, 662). In that case the plaintiff claimed title under the Swamp

Land Act of 1850; the defendant under an act of Congress of 1852, granting public lands to Michigan in aid of the construction of a ship canal around the falls of St. Mary. The lands there in controversy were not included in swamp land selections under the Act of 1850, but were included in selections under the canal grant of 1852. Referring to Wright vs. Roseberry, 121 U. S. 488 (30; 1039), in connection with previous cases, this Court, speaking by Mr. Justice Jackson, said: 'Under the principle announced in that case, and under the foregoing facts in the present case, it would seem that there had been such affirmative action on the part of the Secretary of the Interior in identifying the lands in this particular township, containing the lands in controversy, as would amount to an identification of the lands therein, which passed to the State by the swamp land grant, and that the selection by the State of the demanded premises under the canal grant of 1852, with the approval of the Secretary of the Interior, and the certification of the department to the State that they were covered by the latter grant, may well be considered such an adjudication of the question as should exclude the introduction of parol evidence to contradict it. The exclusion of the land in dispute from swamp lands, selected and patented to the State, and its inclusion in the selection of the State as land coming within the grant of 1852, with the approval of

such selection by the Interior Department and the certification thereof to the State, operated to pass the title thereto as completely as could have been done by formal patent; Frasher vs. O'Connor, 115 U. S. 102 (29; 311); and being followed by the State's conveyance to the Canal Company, presented such official action and such documentary evidence of title as should not be open to question by parol testimony in an action at law. Under the facts of this case, we are of opinion that the plaintiff in error could not properly establish by oral evidence that the land in dispute was in fact swamp land, for the purpose of contradicting and invalidating the department's certification thereof to the State and the latter's patent to the canal company.

"These decisions give much greater weight to the action of the land department in certifying the lands in dispute under the railroad grant of 1856, than was done by the judgment below.

"The Emigrant Company lays much stress upon that clause of the Railroad Act of 1856 exempting from its operations all lands previously reserved by the United States for any purpose. And upon this foundation it rests the contention that no lands embraced by the Swamp Land Act of 1850 could, under any circumstances, be withdrawn by the land department from its operation, and certified to the State under the Railroad Act of 1856. This contention assumes that

the lands in controversy were, within the meaning of the Act of 1850, swamp and overflowed lands. But that fact was to be determined, in the first instance, by the Secretary of the Interior. It belonged to him, primarily, to identify all lands that were to go to the State under the Act of 1850. When he made such identification, then, and not before, the State was entitled to a patent, and 'on such patent' the fee simple title vested in the State. The State's title was at the outset an inchoate one, and did not become perfect as of the date of the act, until a patent was issued.

"But is is equally clear that when the Secretary of the Interior certified in 1858 that the lands in controversy inured to the State under the Railroad Act of 1856, he, in effect, decided that they were not embraced by the Swamp Land Act of 1850. This, perhaps, furnishes an explanation not only of the fact that no action was taken upon the report filed in the General Land Office in 1860, showing that the agent of Calhoun county had selected these lands as swamp and overflowed lands, but of the further fact that, so far as this record discloses, the attention of the Secretary of the Interior was never directly called by the county to any claim by it, under the Act of 1850, to the lands certified under the railroad act of 1856. Nor does it appear that the American Emigrant Company, whose original contract with the county was made in 1861,

ever questioned before the Land Department the validity of the Secretary's certification of 1858 of these lands as passing to the State under the Act of 1856, or asserted a claim to them, until it brought this suit in 1877, nearly twenty years after that officer certified them to the State under the railroad act. And it is significant that this action of the Interior Department does not seem ever to have been called in question by the State.

"The case then is this: In 1858, the Secretary of the Interior decided that the lands in controversy inured to the State under the Railroad Act of 1856, and, if that decision was correct, then they were not reserved from the operation of that act by the Swamp Land Act of 1850. The State was entitled to the lands either under the Act of 1850 or under that of 1856. It was open to it, before accepting the lands under the railroad act, to insist that they passed, under the Act of 1850, as swamp and overflowed lands. No such claim was made. The State—the party primarily interested, and with whom the Land Department directly dealt—accepted the lands under the Act of 1856, and, therefore, not as inuring to it as swamp and overflowed lands within the meaning of the Act of 1850, and, as just stated, has never repudiated its action of 1858, nor sought to have reopened the question necessarily

involved in the action of the Secretary when he certified the lands to the State under the Act of 1856.

"It would seem that, upon every principle of justice, the action of the Secretary of the Interior, in certifying these lands to the State under the Act of 1856, should not be disturbed. The fact that his certification was made subject 'to any valid interfering rights which may exist to any of the tracts,' embraced in his certificate, does not affect this conclusion. That reservation could not have referred to any rights which the State acquired or could have asserted under some other Act of Congress than that of 1856. Certainly, it was not intended by the Interior Department to certify the lands under the Railroad Act of 1856, subject to the right of the State, while holding them under that certificate, to claim them under some other and prior act. The action of the Department in 1858 was intended to be final as between the United States and the State, in respect of the lands then certified as railroad lands. If the State considered the lands to be covered by the Swamp Land Act, its duty was to surrender the certificate issued to it under the the railroad act. It could not take them under one act, and while holding them under that act pass to one of its counties the right to assert an interest in them under another and different act.

"Are those in this action who claim under the State

and under the Act of 1850 in any better condition than the State? Can they be heard to question the action of the Land Department in 1858, if the State is estopped from so doing? We have seen that the County of Calhoun made a written agreement in 1861 with the American Emigrant Company relating to swamp and overflowed lands. But if no such agreement had been made, would the county be heard to say that the Land Department erred, as a matter of fact, when, in 1858, it decided that these lands passed to the State under the Railroad Act? Would the creature of the State be permitted to say what its creator was estopped from saying? The County of Calhoun is a mere political subdivision of the State, created for the State's convenience, and to aid in carrying out, within a limited territory, the policy of the State. Its local government can have no will contrary to the will of the State, and it is subject to the paramount authority of the State, in respect as well of its acts as of its property and revenue held for public purposes. The State made it, and could, in its direction, unmake it, and administer such property and revenue through other instrumentalities. Jefferson County vs. Ford, 4 G. Greene, 367, 370; Soper vs. Henry County, 26 Iowa, 264, 267; Maryland vs. Baltimore & O. R. Co., 44 U. S., 3 How. 534, 550 (11; 714, 721); United States vs. Baltimore & O. R. Co., 84 U. S., 17 Wall 322,

329 (21; 597, 600); Hamilton County Commrs. vs. Mighels, 7 Ohio St. 109, 118; Askew vs. Hale County, 54 Ala. 639, 640; 25 Am. Rep. 730; 1 Dill. Mun. Corp. Secs. 22, 23, 54–71, inclusive, and authorities there cited; Ang. & A. Corp., Sec. 31.

"It seems to be clear that the relations of the county and the State are such that the action of the latter in accepting the lands in controversy under the Railroad Act was binding upon the County of Calhoun, as one of the governmental agencies of the State; and that the country could not, after such acceptance, claim these lands as swamp and overflowed lands, or, by assuming to dispose of them as lands of that character, pass to the purchaser the right to raise a question which, in view of its subordination to the State, it was estopped from raising. We are of opinion that the plaintiff could not, by any agreement made with the county in 1861, or afterwards, acquire any greater rights, or better position, in respect of these lands, than the county itself had after the certification of them in 1858 as lands inuring to the State under the Railroad Act of 1856.

"We are of opinion that the Supreme Court of Iowa did not give proper effect to the action of the Interior Department of 1858. It should have been adjudged that, so far as the lands in controversy are concerned, the plaintiffs claiming under the County of Calhoun

and the State, as well as under the Act of 1850, were concluded by the act of the Secretary of the Interior when he certified such lands as inuring to the State under the Railroad Act of 1856, and by the act of the State in accepting and retaining the lands under that act; consequently, the suit should have been dismissed for want of equity, with costs to the respective defendants.

"*The judgment is reversed*, and the cause is remanded for further proceedings not inconsistent with this opinion."

By this it will be seen that the question of our title is absolutely settled in our favor. Indeed, from the argument in the lower court, we were convinced that defendants relied solely upon their plea of *res judicata*, first plead as an exception and duly passed upon by the Court, then reiterated in their answer, and seemed to be the basis of their hope. This plea of *res judicata* by defendants will be specially treated by our co-counsel, Col. Wise; but we think that the opinion of the District Judge in this case is so clear and conclusive as to need no further argument, and we therefore submit the views of the District Judge upon this subject as conclusive and absolutely unanswerable.

The District Judge in his opinion says:

"This plea is based upon the fact that, in the above

named suit, Robert N. Smith and others sued George A. Turner for 35 and 18-100 acres in the tract of 170 and 80-100 acres, known as 'Silver Lake,' and recovered judgment for it after the Vicksburg, Shreveport & Pacific Railway Company had been substituted as defendants for George A. Turner, lessee. On the trial of that case, the counsel for the Vicksburg, Shreveport & Pacific Railway Company offered to prove that the entire tract of 178 and 80-100 acres was worth $10,000.00. The counsel for the plaintiffs, Robert N. Smith et al., objected to the reception of this evidence on the ground that the title to the 178 and 80-100 acres was not in controversy, but only 35 and 18-100 acres, the tract sued for. Thus, the question was put directly at issue whether the title to the entire tract, known as 'Silver Lake,' was involved in that suit, which is now pleaded in bar of this action, or whether the questions therein involved related only to that particular 35 and 18-100 acres, for which George A. Turner was sued.

"The same parties who now contend that the decision in that case constitutes the thing adjudicated as to the entire tract of 178 and 80-100 acres, at the time successfully contended that nothing was at issue except the question of the right of ownership of 35 and 80-100 acres. In his decision on that point, the presiding Judge said:

"The testimony of the above named witnesses was not heard, because the petition claims only the number of acres held by or in possession of George A. Turner, the defendant; that the judgment in this case, if for plaintiff, could affect only the land held by Turner, and the claim set up by the defendant, Turner, or by the railway, whatever it may be, he does not make this a suit for more than the number of acres of land claimed by the plaintiff, which is about forty acres, more or less, and is shown by admission of counsel not to be worth more than $2000.'"

"This ruling became final between the parties on the question as to whether the entire 'Silver Lake' tract was at issue in that case, or only that part in possession of George A. Turner, because, when the case was carried to the Supreme Court of the United States on a writ of error, the attorneys for Robert N. Smith et al. moved to dismiss the writ of error, because, as they contended, there was no appellate jurisdiction in the Supreme Court, as the only question at issue was the possession of the 35 and 18-100 acres of land, worth not over $2000, and there was no controversy relating to the entire tract of 178 and 80-100 acres, worth $10,000.00. In concluding their motion to dismiss the writ of error, they say: 'It is therefore submitted that no competent question is raised upon this record except as to the

property worth about $2000.00, and therefore the writ of error should be dismissed.'

"The Supreme Court of the United States concurred in the view entertained by the counsel for Robt. N. Smith et al., and in the ruling of his Honor, Judge Boarman, and dismissed the writ of error, holding that no property was at issue, or could be affected by the judgment in the case except that particular tract of 35 and 18-100 acres sued for and claimed by the plaintiffs to be in possession of George A. Turner.

"It is now asked of this Court in this case that the judgment in suit No. 80, United States Circuit Court, awarding Robt. N. Smith et al. the ownership of 35 and 18-100 acres of land be so extended as to cover the entire tract of 178 and 80-100 acres and to ignore that part of the same case in which it is decided by both the Circuit Court and the United States Supreme Court that the decision in the case in no manner involves the entire tract.

"It is the opinion of the Court that the judgment of the Court in suit No. 80 is *res judicata* as to the 35 and 18-100 acres involved in that case, but that it is not a bar to the claim of the plaintiff in this case in which the suit is to recover the remainder of the tract of land, viz: 178 and 80-100 acres, less 35 and 18-100 acres. Hence, the plea of *res judicata* filed by the defendant herein is overruled."

Defendants, by their action in that case, are estopped from setting up this plea of *res judicata.*

There was judgment in the lower court in favor of the plaintiffs and the defendants have brought up this appeal. May we not hope now for an early conclusion of the litigation so long pending between plaintiffs and divers claimants from time to time. In one way or another, for nearly a half century, the plaintiffs have been forced to meet the claims of individuals seeking to avoid the effect of the grant of 1856, with the single exception of the small portion eliminated from this controversy by the tactics of counsel in the case of Smith vs. Turner, we have been successful and this judgment ought to put at rest the question of ownership.

We respectfully ask that the judgment of the lower court be affirmed, reserving our rights to the rents and revenues on the property as per agreement in the record.

Respectfully submitted,

STUBBS & RUSSELL,

Attorneys.

Supreme Court of the United States.

No. 233.—October Term, 1904.

A. H. Leonard, George R. Wilson, R. N. Smith, et al., Plaintiffs in Error,
vs.
The Vicksburg, Shreveport and Pacific Railroad Company, J. H. McCormick, Receiver, and C. C. Harvey.

In error to the Supreme Court of the State of Louisiana.

[May 29, 1905.]

This was an action of ejectment brought, in 1896, by the Vicksburg, Shreveport and Pacific Railroad Company in the First Judicial District Court, Caddo Parish, Louisiana, against certain possessors, for whom Smith, Leonard and others were substituted as defendants, to recover 178.80 acres of land in that parish less 35.18 acres theretofore recovered by Smith and others in another action.

Defendants, both by plea and answer, set up that they, being either the heirs of W. W. Smith, or parties privy, brought suit in the Circuit Court of the United States for the Western District of Louisiana against one Turner, asserting ownership to the entire tract, and praying to be restored to possession of about forty acres thereof, alleged to be illegally held by Turner. That Turner disclaimed title and averred that he was a tenant of the Vicksburg, Shreveport and Pacific Railroad Company, and thereupon the railroad company answered, claiming possession and ownership of the entire tract known as Silver Lake.

That a judgment was rendered in said suit in favor of the heirs of W. W. Smith, (in 1886,) decreeing them to be the owners of the parcel of land possession of which was sought in that suit, and they were put in possession of the same; and that the judgment was final and had the force and effect of *res judicata*, as against all parties to that suit, and as against the claims of plaintiffs in this suit.

The copy of complaint in *Smith* v. *Turner*, attached, showed that diversity of citizenship was set up as the ground of jurisdiction.

And answering, defendants averred that the State of Louisiana sold to W. W. Smith, on the 14th of May, 1853, the tract of land claimed by plaintiff, for the price of $1.25 per acre, which was paid into the treasury of the State by Smith, and was never returned to him; that, on the 24th

of February, 1855, the State of Louisiana, through its constituted authorities, issued a patent to said tract of land to Smith;

That the State of Louisiana claimed and acquired the said tract of land as swamp and overflowed land, granted to the State of Louisiana by the acts of Congress of 1849 and 1850, known as the swamp land grants, and that the State sold the lands to Smith as swamp and overflowed lands;

That all sales of land in Louisiana made as swamp and overflowed land, whether made by the United States or by the State of Louisiana, and whether the land sold was of that character or not, were confirmed by the act of Congress approved March 2, 1855, entitled "An act for the relief of purchasers and locators of swamp and overflowed lands;"

That that act of Congress was extended so as to protect sales after its passage, by the act of Congress of March 2, 1857, to confirm all selections of swamp and overflowed lands by the several States under the acts of Congress of 1849 and 1850;

That the act of March 2, 1855, confirmed the title of the said W. W. Smith to the tract of land, whether it belonged to the State of Louisiana, under the swamp land grant of Congress, or whether it belonged to the United States, and that Smith thus acquired title to the land, both by purchase from the State of Louisiana and by confirmation by Congress.

Thereupon J. H. McCormick, receiver for the Vicksburg, Shreveport and Pacific Railroad Company, filed his plea and exception of *res judicata* to defendants' answer and plea therein of ownership of the said lands, averring that, in a suit entitled *State of Louisiana* v. *W. W. Smith et al.*, brought in 1857 in the District Court of Caddo Parish, Louisiana, defendant Smith put at issue the validity and legality of his title to the land, and, upon final hearing, a judgment was rendered in that suit decreeing the certificate and patent under which Smith claimed to be null and void, and directing their cancellation, and that they be delivered to the State of Louisiana. That defendant appealed to the Supreme Court, which appeal was thereafterwards dismissed; and that said judgment is *res judicata*, and a perpetual bar to defendant's rights of action.

The Caddo District Court, Watkins, J., found that on the trial of the cause of *Smith* v. *Turner*, in the Circuit Court, in which case recovery of only 35.18 acres out of the tract of 178.80 acres, known as "Silver Lake," was sought, though title to the entire tract was asserted on one side and denied on the other, the railroad company had offered to prove the value of the whole tract at ten thousand dollars, but that Smith had objected on the ground that only the possession of 35.18 acres was in issue, and the Circuit Court had, therefore, declined to admit the evidence, and that, the case having gone to judgment, a writ of error from the Supreme Court of the United States was dismissed on motion of defendants in error, because the possession of the 35.18 acres was not worth over $2,000. 135 U. S. 195.

The District Court held that as the same parties, who now contended that the judgment in *Smith* v. *Turner* constituted the thing adjudged as to the entire tract, had successfully insisted in that case that nothing was therein in issue except the right of possession of 35.18 acres, the court was not required to adjudge that the legal effect of that judgment extended to cover the entire tract. As to the judgment in favor of the State, in *State* v. *Smith*, the court recapitulated the facts, finding that the return of the money paid by Smith to obtain the patent was lawfully tendered December 3, 1857; the grounds on which the judgment proceeded; that this judgment was rendered November 24, 1860, in favor of the State, cancelling the Smith entry; that Smith prosecuted an appeal, which, after delay by reason of the Civil War, was dismissed by the State Supreme Court, August 11, 1869; and that because of defective certificates, the Circuit Court was led to believe in *Smith* v. *Turner*, that the case of *State* v. *Smith* had not been disposed of. The District Court further found for reasons given that the title of the railroad company in and to the land was perfect. The court gave judgment in favor of the railroad company and the case was carried to the Supreme Court of Louisiana. 112 La. 51.

Dealing with defendants' pleas of *res judicata* and estoppel, the Supreme Court held that the general rule that a judgment as to the ownership of a portion of a tract of land is conclusive between the same parties, claiming under the same titles, as to the ownership of the whole tract, should not be applied in the circumstances detailed, which in its opinion operated to confine the effect of the judgment to the particular parcel for which recovery was sought. Those pleas were overruled as to all of the tract except 35.18 acres, but the court sustained plaintiff's plea of *res judicata* predicated on the judgment in *State* v. *Smith*, and thus continued:

"This conclusion disposes of the contention that W. W. Smith bought the land in question as swamp or overflowed land, since the State, in the suit just referred to, distinctly alleged that it was not so sold, and its position was sustained by the judgment therein rendered. But if it had been sold as land acquired under the acts of Congress of 1849 and 1850 (9 Stat. 352, 519,) the result would be the same, since it belonged to that class of land which, under the act of the general assembly, No. 247, p. 306, of 1855, could only have been sold after having been surveyed; and one of the causes of action set up by the State in its suit against Smith, and maintained by the judgment therein rendered, was that it had not been surveyed.

"Finally, it is argued that, under the acts of Congress of 1849 and 1850, title *in praesenti* to all swamp and overflowed lands within its limits vested in the State of Louisiana without regard to selection or approval, that the land in question was of that character, and that the State acquired it under those acts, and hence that the United States could not have granted, and the State (or railroad company) could not have acquired it under the act of June 3, 1856, (11 Stat. 18).

"The acts of 1849 and 1850 were clearly not intended to operate against the will of the State. On the contrary, they distinctly left it to the State to select, subject to the approval of the Secretary of the Interior, the lands which it might consider within the terms of the grant.

"Whether the State might have selected the tract in question, and whether such selection might or would have been approved, need not be here considered. In point of fact, not only was the selection not made and the approval not given, but the grantor and the grantee concurred in the view that the tract fell within the terms of the act of 1856, and was granted to and acquired by the State of Louisiana, as the trustee of the V., S. & P. R. R. Co., for the purpose of aiding in the construction of the railroad which that company was to build."

And the court quoted the headnotes of *Rogers Locomotive Machine Works* v. *The American Emigrant Co.*, 164 U. S. 359, to the effect that the swamp land act of 1850 gave an inchoate title to the State; that the identification of the lands by the Secretary of the Interior was necessary before the title became perfect; that the certificate of the Secretary, in 1858, that certain lands enured to the State under the railroad act of 1856, was a decision that they were not embraced by the swamp land act of 1850; that the acceptance by the State of lands certified to it by the Secretary is conclusive upon the State, and that a contract with a county for swamp and overflowed lands gives no better right than the county had to the lands which had been previously certified to the State.

The court then stated that, apart from these defences, there appeared to be no objection to plaintiff's title.

The judgment of the District Court was affirmed, and this writ of error allowed. Motions to dismiss or affirm were submitted and their consideration postponed to the hearing on the merits.

Mr. Chief Justice FULLER delivered the opinion of the Court:

We assume from the errors assigned, and no other grounds are indicated by the record, that Federal questions in two aspects are relied on to justify this writ of error.

First. The construction and application of the acts of Congress of 1849, 1850 and 1856, taken with other acts referred to.

But as to this it should be pointed out in the first place that the State court adjudged the Smith title invalid on the independent ground, among others, of non-compliance with an act of the general assembly of Louisiana; and, in the second place, that the Federal question thus suggested had been so explicitly foreclosed by previous decisions as to leave no room for real controversy. *Rogers Locomotive Works* v. *American Emigrant Company*, 164 U. S. 559; *Michigan Land Company* v. *Rusk*, 168 U. S. 592; *Equitable Life Assurance Company* v. *Brown*, 187 U. S. 308.

Second. That the Supreme Court of Louisiana, by its judgment in this case, denied a right specially set up or claimed under the Constitution of the United States, or an authority exercised under the United States, that is to say, that such a right was asserted, and was denied by the State Supreme Court, in declining to give collateral effect to a judgment, under certain circumstances, rendered by a court of the United States in Louisiana.

We inquire then whether, when the State court, while holding the defence good as to the 35.18 acres by reason of the judgment in *Smith* v. *Turner*, held that, in the circumstances detailed, defendants could not be permitted to insist that the thing adjudged in that case determined the title to the entire tract, that ruling presented a Federal question.

Generally speaking, questions of this sort are not Federal questions. In *Pierce* v. *Somerset Railway*, 171 U. S. 641, 648, we said: "A person may by his acts or omission to act waive a right which he might otherwise have under the Constitution of the United States as well as under a statute, and the question whether he has or has not lost such right by his failure to act or by his action, is not a Federal one." *Eustis* v. *Bolles*, 150 U. S. 561; *Rutland Railroad Company* v. *Central Vermont Railroad Company*, 159 U. S. 630, and *Seneca Nation* v. *Christie*, 162 U. S. 283, were cited.

In *Eustis* v. *Bolles*, the State court held that by accepting his dividend under insolvency proceedings, Eustis had waived his legal right to claim that the discharge obtained under subsequent laws impaired the obligation of a contract, and this court held that whether that view of the case was sound or not, it was not a Federal question, and therefore not within the province of this court to inquire into.

In *Seneca Nation* v. *Christie*, it was held by the State court that even if there were a right of recovery on the part of plaintiffs in error because a certain grant was in contravention of the Constitution of the United States, yet that such recovery was barred by the New York statute of limitations.

In *Gillis* v. *Stinchfield*, 159 U. S. 658, and *Speed* v. *McCarthy*, 181 U. S. 269, it was ruled that the application of the doctrine of estoppel to mining locations did not raise Federal questions.

In the present case, the Supreme Court of Louisiana applied the doctrine which forbids parties from assuming inconsistent positions in judicial proceedings.

In its view, Smith, having insisted in *Smith* v. *Turner*, that, notwithstanding the railroad company had come in as defendant, and each party asserted title to the entire tract, the title to the 35.18 acres was alone in issue, and that the value of the whole tract was, therefore, not involved, and the railroad company having been thereby deprived of its writ of

error, must be confined in this suit to the specific recovery obtained in that, so far as the effect of that judgment was concerned. That was a question of estoppel or quasi-estoppel and not a Federal question. Whether it was sound or not, it is not for us to inquire. It was broad enough to support the judgment without reference to any Federal question.

Writ of error dismissed.

True copy.

Test:

Clerk Supreme Court, U. S.